THE COVNTREY IVSTICE,

CONTEYNING THE practise of the IVSTICES of the Peace out of their SESSIONS.

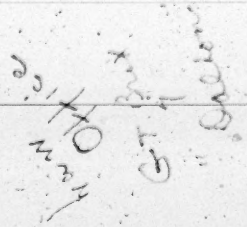
Gathered for the better helpe of such Iustices of Peace as haue not beene much conuersant in the studie of the Lawes of this Realme.

By MICHAEL DALTON of *Lincolnes Inne, Gent.*

Iustice is the ſtrẽgth of Peace, and the maintenance of Honor. Cic.

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M.DC.XVIII.

Cum Priuilegio.



TO THE RIGHT HONORABLE, SIR HENRY MONTAGVE, Knight, Lord chiefe *Iustice of the Pleas, holden before* the Kings Maiestie.

MY Honourable good Lord,

After I had spent many yeares in the studie of the Lawes of this Realme, and was called to the ministration of *Iustice* in my Countrey, I thought it not sufficient to apply my selfe only to the precepts and directions of former times; But withall, to obserue such newe accidents, as daily happened within mine experience, thereby the better to performe the duties of my place: Whilest I thus endeauoured my selfe, I obserued that *Iustices* of Peace in their places, grew in neglect, and many times were ouerswayed by superiour solicitations, yea, and sometimes disgraced, in such sort, as I could haue been content rather to haue sit down in priuate quiet, then with care, studie, and paines to incurre such hazards and discontentments. But againe, whilest I stood thus doubtfull, it pleased the Fountaine of Iustice, (I meane his *Royall Maiestie*) so to countenance and grace, yea to shew his Maiesties high esteeme of this Authoritie of *Iustices* of Peace, not onely (in his Maiesties late Speech in the *Starre-chamber*,) prizing and valuing them with the neereſt employed about him;

Octauo Maij, anno 1616.

But (to the great honour of this Realme, and of the gouernment thereof) sithence also establishing this countrey gouernement by Iustices of Peace, in his Maiesties natiue countrey of Scotland: so as me thought, I sawe the current of Iustice to runne cleere and comfortably through the land, and my selfe to receiue new vigour and encouragement; whereupon I began to recollect my confused notes and obseruations, willing for my priuate helpe and better readinesse, to digest them into some order and method, such as my vnderstanding could best contriue. Thus prepared, I yet made question with my selfe, whether it were better to aduenture the publishing of these my labours, or to keepe them by me onely for my owne priuate vse. In this vnsetled cõsultation, being brought vnto your Lordship by my good friend, (who also discouered to your Lorship this my labour) and finding your Lordship fauourably to respect me, and it, I tooke heart and encouragement to put the same to Print, after that I had obtained (according to my humble suit) your Lordships fauour for allowance and patronage thereof.

Now it remaineth further to craue of your Lorship not onely for my selfe, but for all that shall vprightly labour in this Iusticiarie course, that wee may receiue from your Lordship such encouragement and countenance, as that we may couragiously and constantly vndergoe the charge imposed vpon vs, without feare of oppositions, or other vncomfortable disturbances. So by your Lordships fauour and meanes shall Iustice be the more duely administred, & his Maiesties Peace the more firmely mainteyned, to the honour and safetie of the Kings Maiestie, and the good and peaceable gouernement of all his subiects. And so his Maiestie will no doubt proceede (as hee hath begunne) to increase your

your Honour, for your care in honouring him, and his Royall Throne thereby; And the people, who shall feele the goodnesse and benefite of your zeale of Iustice, will heartily and ioyfully pray for your happinesse; And God, beholding how you make Iustice and Peace to goe together, will according to his aboundant Mercies, and vnfallable Trueth, giue you the euerlasting reward of Iustice and Peace: For all which I will continually pray, and besides rest,

Your Lordships

in all humilitie, and

duetie, euer to bee commaunded.

MICHAEL DALTON.

To the Right Worshipfull, Sir IAMES LEE, Knight, the Kings *Maiesties Atturney of his Court of Wards* and *Liueries*, And to the Right Worshipfull, *and my very good vncle*, Thomas Spencer, Esquire, and to the residue of my Masters of Lincolnes Inne.

IT may peraduenture seeme strange, that after so many learned Writers in this kinde, I (a man of so weake parts,) should presume to offer to the view of the world, a worke of this nature; Yet my reasons being considered with indifferent fauour, I hope to bee excused not onely with you, but with all others, that bee louers of their Countrey, and seeke the peace thereof. I confesse my selfe a long, yet an vnprofitable member of your honourable Societie; But seeing that my calling is to a Countrey life, and considering that he which is of the meanest condition, and that hath the smallest tallent, may (not without iust reprehension) retire himselfe so to his priuate pleasure, or profite, as that hee should neglect to shew some fruite and token of his loue to his Countrey, (least therein the Heathen Philosopher might condemne

demne him, who ſaid, Non ſolum nobis nati ſumus, ſed partim Patria, &c.) I haue beene the bolder, according to my place, ſmall power, and capacitie, to offer this my ſmall mite into the Treaſurie of my Countrey; This worke (whatſoeuer it bee) beeing written, firſt, as priuate Notes for my particular helpes in this buſineſſe, wherewith my ſelfe and many others are daily imployed, and ſet on worke, without yeelding any pleaſure or profite at all to vs, otherwiſe then for the publique good.

The ſweete of like labours, you my Great Maſters, (which I doe moſt gladly beholde) doe from time to time reape more fully, riſing daily to great honour and wealth, through your Wiſdomes, Deſerts, and great paines; That which remaineth to vs Countrey Iuſticers (for the moſt part) is the wearying of our ſelues, the ſpending of our time, wits, and eſtates, Vt alij inde pace fruantur, and requited many times not onely with much euill will, from or by meanes of ſuch as wee haue in Iuſtice to deale withall; but oftentimes alſo rather diſgraced, then countenanced or incouraged by ſome in higher place.

I ſpeake not this without acknowledging it to bee both iuſt and meete, that the actions and proceedings of the Iuſtices of the Peace, ſhould bee well and duely looked into, and themſelues worthie to bee puniſhed, when through malice, or other corruption they ſhall doe vniuſtly: But if through vnwilling ignorance they happen to erre and doe amiſſe, they are rather to bee better informed, then ill intreated; Nemo naſcitur ſapiens, & humanum eſt errare.

I am bolde to write vnto you, my worthy Maſters, and worſhipful Friends, and the reſidue of this honorable fellowſhip, knowing that there be many amongſt you, daily riſing to great

great places; whose honour it will bee to mainetaine the life of the Lawe, and Iustice of the Realme, with the excellencie thereof, in causing due execution thereof to be had and done; redressing the abuses and defects thereof, and incouraging such as shall carrie themselues, iuste, fideliter, & sincere. *Againe, that there be many among you, of great learning and iudgement, by whom this my imperfect worke may, yea and I hope shall bee more polished and perfected: And seeing some others amongst you, whose fortunes proue (as mine doeth) to withdrawe themselues into their Countries, I would gladly encourage them to employ their better talents to the common good.*

I acknowledge there bee diuerse other bookes in this kinde, more learned and methodicall; but withall I obserue the businesse of the Iustices of Peace, to consist partly in things to be done by them out of their Sessions, and sometimes priuately, and peraduenture vpon the sudden, without the aduice or association of any other, and partly at their Sessions of the Peace: Of things of this last kinde, I purpose not in this Treatise to meddle, for that at such publique meetings and assemblies, they are farre more able to direct themselues; But for the priuate and sudden helpe of such Iustices of Peace, who peraduenture haue not read ouer the former Writers: and if they haue, yet the multiplicitie of Statutes (whereupon the office and priuate practise of Iustices of Peace doth principally consist) being such, and at euerie Parliament so altered, by expiration, discontinuance, and otherwise, as that it is a worke verie hard and laborious, for Gentlemen not conuersant in the studie of Lawes (although otherwise verie industrious) to proceede as by the Commission they ought and are prescribed, sc. Secundum Leges, & Statuta Regni: *vpon which considerations, and*

for

for their eaſe principally, I haue publiſhed this worke; knowing that there bee diuers both Honourable and worthie perſons in the Countrey, of whome ſome for want of knowledge of the many and particular Statutes in force and tediouſneſſe of the ſtudie of them, doe ſeeke to bee exempt out of the Commiſſion *of the* Peace; *Others beeing in, doe forbeare to meddle, or meddling, doe not that good Seruice therein, which they are deſirous to doe. I haue therein endeauoured to ſet downe things ſo plainely, and briefely as I could, with Referrence to the Statutes abridged, whereby the Reader may the better reſolue, and ſatiſfie himſelfe, what hee ought to doe in euery particular almoſt, that ſhall come before him, or them, out of their Generall Seſſions of the Peace; And yet for that in caſes of Ambiguitie,* Satius eſt Fontes petere, quam Sectari riuulos, Co.lo.117. *I could wiſh all Iuſtices of the Peace to haue readie by them, the Statutes at large, as well as the Abridgements; and to vſe this Booke, or the Abridgements of the Statutes, as Tables, and briefe Memorials, but to truſt, and ground themſelues chiefly vpon the Bookes at large.*

It reſteth now onely to intreate your fauours; And although I might reſt confident by the honourable Patronage *I haue obtained, whoſe high place, and Preſidencie for matters of Iuſtice, and iudicious vnderſtanding, drewe mee to couet the ſame, (and not a little beſides induced, yea, obliged thereto in regard of the neere alliance by Marriage into the Honourable Houſe of the* Spencers, *) Yet withall I could not out of that duetie and loue which I owe to this Honourable Societie, (my firſt Breeder in the Studies of the Lawe) and hope of your tender reſpect, to vpholde the credit*

credite of an affectionate member of your Societie, but be bold also to craue your further countenance in these my Labours; and that you would be pleased to accept this louing remembrance, as a thankefull gratuitie to you, to whom I must euer acknowledge my selfe deepely obliged, and euer to rest at your commaunds,

MICHAEL DALTON.

To

To the Reader.

WOrthy Gentlemen, for whoſe vſe I haue eſpecially publiſhed this worke; I feare my ouerſights be ſo many, as that this my aduenterous attempt may iuſtly be cenſured: But for that my purpoſe herein was, only to doe my country good, I hope of your courteous defence againſt malitious detractors, who may more eaſily finde a fault, then amend it, and more eaſily amend, then to make new. This is my firſt publiſhing hereof, *Et nihil ſimul natum & perfectum.* My paines in collecting theſe together, is greater then the reading, and therefore the indifferent Reader will rather amend then finde fault, which is all I deſire, with your acceptance. And ſo I commit you to God. From my Chamber at *Lincolnes* Inne the firſt day of May. *Anno* 1618.

MICHAEL DALTON.

For the better vſe of this Booke, and finding out of the Authors heerein alledged, *you muſt obſerue the ſhort directions* hereunder following;

F. *or* Fitz. Fitzherbert. *He was ſometimes one of the Iudges of the Common Plees.*

Br. Brooke. *ſometimes Lord chiefe Iuſtice of the Common Plees.*

Dyer, *late alſo Lord chiefe Iuſtice of the Court of Common Plees.*

Co. *Sir* Edw. Coke *Knight, late Lord chiefe Iuſtice of the Kings Bench.*

Plo. *Maſter* Plowdens *Commentaries.*

Raſt. Raſtals *Abridgement of the Statutes, imprinted* Anno Domini 1583. *Hee was ſometimes one of the Iudges of the Common Plees.*

Lib. Intr. *The booke of Entrees Impreſſ.* 1596.

Lbt, *or* Lambt. *Maſter* Lambards *Iuſtice of P. Imprinted* 1599.

Cromp. *Maſter* Cromptons *Iuſt. of P. Imprinted* 1606.

P. *Maſter* Poultons *Abridgement of the Stat. Imprinted* 1606

P.R. *Maſter* Poulton de Pace Regis.

Of

Of the Common Law, and ſuch as had, and ſtill haue, the Conſeruation of the Peace by the Common Law.

THE Common Lawes of this Realme of England, receiuing principally their grounds from the Lawes of God, and Nature, (which Law of Nature as it perteineth to man, is alſo called the law of Reaſon) and being for their Antiquity, thoſe whereby this Realme was gouerned many hundred yeares before the Conqueſt; the equitie and excellency whereof, is ſuch as that there is no humane law within the circuit of the whole world, by infinite degrees, ſo apt and profitable, for the honourable, peaceable, and proſperous gouernement of this kingdome, and ſo neceſſary for all eſtates, and for all cauſes, concerning Life, lands, or goods, as theſe Lawes been: theſe Lawes, I ſay, euen from their beginning, haue continued a ſpeciall care, for the Conſeruation of the peace of this land. And to that purpoſe, at the Common Law (long before Iuſtices of the Peace were made) there were ſundry perſons to whoſe charge the maintenance of this Peace was recommended; and who with their other offices had (and yet ſtill haue) the conſeruation of the peace annexed to their charges, as a thing incident to, and vnſeperable from their ſaid offices; And yet neuertheleſſe they were and are called by the names of their offices onely, the conſeruation of the peace being included therein.

Co. 3, 8, & 9, parts, Preface.

First, the Kings Maieſtie (by his dignity royall) is the principall conſeruator of the Peace within his Dominions (and is *Capitalis Iuſticiarius Angliæ*) in whoſe hands at the beginning, the Adminiſtration of all Iuſtice firſt was; and afterwards by and from him onely was this authority deriued and giuen to others.

20. H. 7. 7, 2. Co. 11. 85.

The Lord Chauncellor (or Lord Keeper of the great Seale,) the Lord high Steward of England; the Lord Marſhall, & high Conſtable of England; the Lord Treaſurer of England, and euery Iuſtice of the Kings Bench; as alſo the Maſter of the Rolls, haue incloſed in their ſaid offices the conſeruation of the peace ouer all the Realme: And euery of theſe may award Precepts, and take Recogniſances for the peace, by vertue of their places.

Lamb. 12.

There be others who (by vertue of their offices) haue the

conſeruation of the peace, but yet onely within the precincts of their ſeuerall Courts, as namely, the Iuſtices of the Court of Common Plees, the Barons of the Eſchequer, and the Iuſtices of Aſſiſe. Lamb.13.

Alſo the Steward of the Sheriffes turne, the Steward of a Leet, and the Steward of a Court of Pipowders; euery of them may commit him to ward that ſhall make an Affray in their preſence, whilſt they be in execution of their offices, for theſe be Courts of Record: and ſo in all other Courts of Record. Lamb.14.

And the Steward of the Sheriffes Turne, as alſo the Steward of a Leete (during their Courts) may binde him to the Peace that ſhall make an Affray in their preſence, ſitting the Court, And may commit him to ward vntill he hath found ſuertie for the peace; And may alſo take the examination of felons, & commit them to the Gaole; And may alſo take preſentment of any felony, or other offence (at the Common Law) againſt the peace, except the death of a man. Cromp.7. 13.H.4.12. 21.Ed.4.21.

And ſo, if any other contempt or diſturbance to the Court ſhal be committed in any (of the ſaid Courts, or in any other) Court of Record, the Iudge (or Steward) there, may impoſe vpon ſuch offendors a reaſonable fine. Co.8.38.

The Sheriffe is a conſeruator of the peace within his County: And (vpon requeſt to him made) he may commaund another to finde ſuerty of the peace, and may take the ſame ſuerty by Recogniſance, and that *ex officio*, and without any *Supplicauit* to him directed. Fi z.N.B.81.d.

Coroners alſo (by the Common Law) are conſeruators of the peace, within the County where they be Coroners: but they haue power for the keeping of the peace, onely as the Conſtables haue. *Vide tit.* Forceable entrie.

The high Conſtables of Hundreds, are conſeruators of the peace, within their ſeuerall Hundreds and limits.

Euery petie Conſtable within the limits of their ſeueral towns, be conſeruators of the peace by vertue of their office: And it ſeemeth the name and office of a Conſtable with vs, is the ſame that the Borſholder is in Kent, Thirdborow in Warwick-ſhire, and Tithingman and Borowhead is in other places. *Vide tit.* Affray & Forceable entrie. Lamb.14.

If any man ſhall make an Affray or aſſault vpon another in the preſence of the Conſtable or Borſholder, &c. they may commit the offendors (to the Stockes or to ſome other ſafe cuſtodie for the preſent, and after may carry them before ſome Iuſtice of Peace, or to the Gaole) vntill they ſhall find ſuerty for the peace; which ſuerty the Conſtable himſelfe may alſo take by * Obligation, by ſome opinions: But *quære* thereof; for a man cannot be bound 3.H.4.9. F.Barr.202. * 10.Ed.4.& 3.H.4. Br.Peace 2.& Suerty 23,26.

Fitz. 81. d. bound to the King, but onely by matter of Record: And a Constable cannot take a Recognisance for the Peace (which is a matter of Record) nor any other person, but onely a Iudge of Record.

Euery of these Conseruators of the Peace (by the auncient Common Law) are to employ their owne valour, and may also commaund the meet helpe, ayde, and force of others, to arrest and pacifie all such, who in their presence, and within their iurisdiction and limits, by word or deed shall goe about to breake the Peace.

Also euery of these Conseruators of the Peace, if they haue committed, or bound ouer, any such offendors, it seemeth they are then to send to, or to be at, and attend the next sessions of the Peace, or Gaole deliuerie, there to obiect against such offendors.

But for the high Constables, and petie Constables, although they haue (by the Common Law) the charge of the Peace as incident to their offices, yet it seemeth their offices and authority began not long before the time that Iustices of Peace were ordeined, (See here *titulo* Constable.) Whereas the Sheriffes, Coroners, Stewards of the Sheriffes Turne, of the Leet, & of the Court of Pipowders, & the Iustices of all the higher Courts, were long time before the Conquest. See *Co. 9. Part*, the Preface.

There were sundry other persons, who (by the ancient Common Law) had the ordinarie keeping of the Peace, and were named *Custodes pacis*, whereof some were by election (in full Countie) and some by Tenure, as you may see in M. *Lambert* 16, 17. But these are now ceased.

The first ordeyning of Iustices of the Peace.

Their beginning.

BY Chronicle Law in our Annals, it is reported that *William* the Conqueror ordeined Iustices of the peace about *Ann. Dom.* 1070. *anno quarto* of his reigne, whereas Iustices of Peace had not their being almost 300. yeares after, *viz.* vntill *Ann. Dom.* 1327. At which time Iustices of Peace were first created, and ordeyned by the Stat. 1. *Ed.* 3. *ca.* 16. By which Stat. it was ordeyned, that in euery shire of the Realme certain persons should be assigned to keepe the peace: And their authority was after enlarged by the Statuts 2. *Ed.* 3. *cap.* 6. 4. *Ed.* 3. *cap.* 2. 18. *Ed.* 3. *cap.* 2. 25. *Ed.* 3. *cap.* 8. and 34. *Ed.* 3. *cap.* 1. And by the said Stat. of 34. *Ed.* 3. 1. were they first (generally) enabled to heare and determine (at the Kings suit) felonies and trespasses; And each County had now it proper Commissioners for the peace, whereas before (it seemeth) the Commissions to the Iustices of peace were not alwayes seuerall into each shire, but sometimes iointly to sundry persons ouer sundry shires. Hollinsh. 8.

Their name.

But the Stat. of 36. *Ed.* 3. *cap.* 12. is the first Statute that nameth them Iustices of the Peace.

They be called (Iustices of the Peace) because they be Iudges of Record, and withall to put them in minde (by their name) that they are to doe iustice (which is, to yeelde to euery man his owne by euen portions, and according to the lawes, customes, and statutes of this Realme, without respect of person.)

They are named also Commissioners (of the peace) because they haue their authority by the Kings commission.

And here it shall not be amisse, shortly to put them in minde how that iustice may be peruerted many wayes, (if they shal not arme themselues with the feare of God, the loue of Truth and Iustice; and with the authority and knowledge of the Lawes and Statutes of this Realme.) As namely,

1 First, by Feare; when fearing the power or countenance of another, they doe not iustice.

2 Fauour; when they seek to please their friend, neighbour, or others.

3 Hatred or malice, against the party or some of his.

4 Couetousnesse; when they receiue or expect fee, gift, or reward: for as the wiseman saith, *Rewards and gifts doe blinde the eyes of the wise, and make them dumb that they cannot reproue faults.* Eccles. 20. 28.

5 Perturbation of mind, as anger, or such like passion.

6 Error

6 Error, or want of true vnderſtanding, what is to be done.

7 Preſumption, when without Law (or other ſufficient rule or warrant) they (preſuming of their owne wits) proceed according to their owne wills and affections.

8 Delay, which in effect is a denying of iuſtice; *Negligentia ſemper habet Comitem infortunium, et mora trahit periculum.*

9 Precipitation, or too much raſhneſſe, when they proceede haſtily without due examination and conſideration of the fact, and of all materiall circumſtances, or without hearing both parties; for as one ſaith truely (*qui aliquid ſtatuerit, parte inaudita altera æquum licet ſtatuerit haud æquus eſt,*) He that ſhall iudge or determine of a matter, the one partie being vnheard, although he ſhall iudge aright, yet is he not a iuſt Iudge.

All theſe his Maieſtie hath ſhortly, yet fully obſerued in his charge lately giuen to the Iudges, *ſc.* charging them *That they doe Iuſtice vprightly, and indifferently without delay, partialitie, feare, or briberie, with ſtout and vpright hearts, with cleane and vncorrupt hands, and yet not to vtter their owne conceits, but the true meaning of the Law, not making Lawes, but interpreting the Law, (and that according to the true ſenſe thereof, and after deliberate conſultation,) remembring that their office is* Ius dicere, *and not* Ius dare. *His Maieſt. Speech in the Star-Chāb. A° 1616.*

According to this laſt alſo is the rule giuen in the booke of Iudges, *ſc. In all cauſes doubtfull firſt to conſider of the matter, to conſult, and then to giue ſentence.* Iudges 19.30.

Yea God himſelfe hath giuen vs preſidents of ſuch deliberate proceedings, as you may ſee in *Geneſis cap.* 3. *ver.* 8. *&c. et cap.* 18. *verſe* 21. Gen. 3.8,9,11.

Theſe are worthy directions for all Iuſtices of Peace, that they carry themſelues in their places vprightly and indifferently, not vttering their owne conceits, nor vpon the ſudden to ouer-rule things, but after deliberate conſideration and conſultation, then to proceed to execute the authority committed to them.

Iuſtices of Peace are Iudges of Record, appointed by the king to be Iuſtices within certaine limits, for the conſeruation of the Peace, and for the execution of diuers things comprehended within their commiſſion, and within diuers Statutes committed to their charge. *Their deſcription or definition.*

Now that the Iuſtices of Peace are Iudges of Record (yea that euery Iuſtice of Peace by himſelfe is a Iudge of Record, and one vpon whoſe ſole report and teſtimony, the Law repoſeth it ſelfe very much) appeareth more plainly, if you obſerue theſe things following. 9.E.4.3. 14.H.8.16.

1 He is made vnder the great Seale of England, which is a matter of Record.

2 Euerie Iustice of Peace hath iudiciall power giuen vnto him by the Commission, *&c.* in the first *Assignauimus*.

3 Also by some Statutes they haue iudiciall power giuen them; for they may make a Record of a force by them viewed, and may thereupon fine and imprison the offendors: yea one Iustice of Peace may also heare and determine, and punish an offendor (in some cases) as conuict vpon his owne view, or examination.

Vide tit. Ryot, and Heare and Determine.

4 His Warrant (though it be beyond his authoritie) is not disputable by the Constable, or other inferior Minister, but must be obeyed and executed by them; But this must be vnderstood, when the Iustice of Peace hath iurisdiction of the cause, for, or concerning which he hath graunted his Warrant: for otherwise the Constable or other Officer executing their Warrant, seemeth to be punishable, notwithstanding the Iustices Warrant.

Lamb. 67 94. 14.H.8.18. Co.10.76.

Vide tit. Warrants.

5 He may take a Recognisance (for the Peace, &c.) which is a matter of Record, and which none can doe but a Iudge of Record.

Lambert. 67.

6 His Record (or Testimonie) in some cases, is of as great force, and in some other cases of greater force then an Indictment vpon the oath of twelue men. See hereof *titulo* Force, Highwayes, and Ryot.

Great cause therefore haue the Iustices of Peace to take heed, that they abuse not this their credite and authoritie, eyther to the oppressing of the subiect by making vntrue Records, or defrauding of the King by suppressing the true Record.

PEACE.

PEACE in effect (saith Mr *Fitzh.*) is the amitie, confidence, and quiet that is betweene men; And he that breaketh this amitie or quiet, breaketh the Peace.

Fitz. Iust. of P. 12.

Yet, Peace (in our Law) most commonly is taken for an abstinence from actuall and iniurious force, & offer of violence; and so is rather a restraining of hands, then an vniting of minds, And for the maintenance of this Peace chiefly, were the Iustices of Peace first made.

Vid. tit. Plague, Suertie for the Peace and forcible Entrie.

The breach of this Peace seemeth to be any iniurious force or violence moued against the person of another, his goods, lands, or other possessions, whether it be by threatning words, or by furious

rious gesture or force of the body; or any other force vsed *in Terrorem populi.*

The office of the Iustice of Peace is principally to be exercised to the suppressing of such iniurious and vnlawfull force or violence; and yet the Commission of the Peace being, *pro quieto regimine et gubernatione populi*: I see not why the Iustices of Peace should be restrained from preuenting and represing such other offences, misbehauiours, and deceipts, as may breake the amitie, quiet, and good gouernement of the people, and whereof discords, and so breaches of the Peace doe often arise (though there appeare neyther force nor violence in the offence it selfe) as libellings, cosinages, and such other offences. *Vide tit.* Good behauiour, *ter.*

But it is no part of their office to forbid lawfull suits; albeit they shall doe well to be mediators of peace in such suits and controuersies as shall arise amongst their neighbours.

The conseruation of this Peace (and therein the care of the Iustice of Peace) consisteth in three things, *viz.*

1 In preuenting the breach of the Peace (wisely foreseeing and represing the beginnings thereof) by taking suertie for the keeping of it, or for the good behauiour of the offendors, as the case shall require.

2 In pacifying such as are in breaking of the peace. See *Postea titulo* Affray.

3 In punishing (according to Law) such as haue broken the Peace.

But of the three, the first, the preuenting Iustice, is most worthy to be commended to the care of the Iustices of Peace.

Iustices of Peace (at this day) are of three sorts, and are appointed or created by three meanes. *Three sorts.*

1 First, by Act of Parliament; as the Bishop of Ely and his successors, and their temporall Stewards of the Isle of Ely (for the time being) shall be Iustices of Peace within the said Isle, and shall vse and haue within the same Isle, all such power as doth belong to any Iustice of Peace within any Countie. 27. H. 8. 24. P. Iust. 2.

And so of the Archbishop of Yorke, and the Bishop of Durham, and their successors, and their temporall Chauncellors, &c. *Ibidem.*

2 Secondly, by Graunt made by the King by his Letters Patents, vnder the great Seale (and by his Bill assigned) as Mayors, and chiefe Officers in diuers corporate Townes: And such the King cannot discharge againe at his pleasure, but they shall continue and enioy their iurisdiction, according as their Letters Patents doth enable them: And therefore if the King granteth to a Mayor *By Graunt.* Lambert. 26. Br. Commiss. 5.

Mayor or other head Officer of a Citie, or corporate Towne, and to their ſucceſſors, to be Iuſtices of Peace in their Citie or Town, and after maketh out a Commiſſion of the peace to others there, yet the authority and iuriſdiction of the Mayor &c. remaineth good for that it was graunted to them and their ſucceſſors, and is not reuocable at the Kings pleaſure, as a Commiſsion of the Peace is.

And ſuch Iuſtices of Peace by Graunt or Patents, haue thereby the ſame power that the Conſeruators of the peace had by the Common Law: And it ſeemeth ſuch power alſo as is giuen to the Iuſtices of Peace, (or to any one Iuſtice of Peace) by expreſſe wordes in any Statute; but none of them haue therby the whole power which is ordinarily giuen to the Commiſſioners of the Peace by their Commiſſion. Lamb. 27

By Commiſſion. 3 The third ſort of Iuſtices of Peace are by Commiſsion, (made of common courſe) vnder the great Seale of England: And theſe are appointed by the diſcretion of the Lo: Chauncellor. And yet the Iuſtices of peace within the Countie Palantine of Lancaſter are to be made by Commiſſion vnder the ſeale of the ſame Duchy; by the Stat. 27. *H.* 8. *cap.* 24. Raſtal. 584.

But of theſe Commiſsioners of the peace, their authoritie doth determine by diuers meanes; yet more vſually by three meanes:

Firſt, by the death of the King, or by his Reſignation of his Crowne.

Secondly, at the Kings pleaſure, and that in two ſorts;

1 Eyther by the Kings pleaſure expreſſed (as the King in expreſſe wordes may diſcharge them by his Writ vnder the great Seale, or by *Superſedeas*; but the *Superſed'* doth but ſuſpend their authoritie, which may be reuiued by a *procedendo*;) 5. E. 4. 32. Br. Cómiſſ. 18. 12. Aſſ. 21. Br. Cómiſſ. 13.

2 Or by implication (as by making other Commiſsioners of the ſame kinde, and within the ſame limits, leauing out the ancient Commiſſioners names) 10. *Ed.* 4. 7. *et* 3. *Marie.* 1. Br. Commiſſ. 20. 24.

But here the auncient Commiſſioners muſt haue knowledge of ſuch new Commiſſion: for this determination of the olde commiſſion groweth not immediatly by the making of the new commiſſion; but either by giuing ſpecial notice of the new commiſſion vnto the old Commiſſioners; Or elſe by and after the Reading (or proclayming) of the new commiſſion, at the Aſſiſes, Seſſions of the Peace, or at the full County; Or elſe by holding of ſome open Seſſions by vertue of the new commiſſion, (in which two laſt caſes, the old Commiſſioners muſt take notice of the new commiſſion) And in all theſe caſes, if the auncient Commiſſioners doe ſit by vertue of their ancient commiſſion, and after ſuch notice or publiſhing of the new commiſſion, all whatſoeuer Br. Commiſſ. 2. & 18.

euer ſuch auncient Commiſſioners ſhall ſo doe is voyde: And contrariwiſe, vntill ſuch notice, or publiſhing of the new Commiſſion, whatſoeuer meane acts ſuch auncient Commiſſioners ſhall do, by vertue of their auncient commiſſion is good in Law. See 34. *Aſſ.* 8. *Br. Commiſſ.* 14.

11.H.6.cap.6. 1.E.6.cap.7. P.Diſcont 6. Alſo in all caſes where an auncient Commiſſion of the Peace is determined by a new, yet no Proces or ſuit depending before the old Commiſſioners ſhall be diſcontinued thereby, neyther ſhall any other thing done by the Iuſtices of the Peace by force of their auncient Commiſſion, be made or become voyde thereby.

1.Ed.6.7. 1.M.1.8. P.Diſcont 4. Thirdly, by the Acceſſion of another office; as when a Iuſtice of Peace is choſen to be Sheriffe of the ſame County, his authority of a Iuſtice of Peace there, is ſuſpended during his Sheriffewike: But after that another is choſen and ſworne Sheriffe of the ſame County, then his authority as a Iuſtice of Peace remayneth as it was before.

1.E.6.cap.7. P.Diſcont 4. But if a Iuſtice of Peace be made a Knight, or Serieant at Law, or hath any greater name or office of honour or dignitie giuen him, this taketh not away his authority of a Iuſtice of Peace.

Br. Coñ. 19, 21. Offic' 25. Dyer.165. Co.7.30. Br.Coñ.5. Note alſo, that although by the death of the King, or by his reſignation; the authority of all Iuſtices of Peace (yea and of all Iudges, Commiſſioners of *Oyer* and *Terminer*, Commiſſioners of Gaole deliuery, Sheriffes Eſcheators, and other officers that are by commiſſion) doth ceaſe, yet Mayors, and chiefe Officers in Cities and corporate Townes (which haue the authority of Iuſtices of peace, or of the conſeruation of the peace: by graunt vnder the Kings Letters Patents to them and their ſucceſſors) their authority ſtill remayneth, notwithſtanding the Kings death or reſignation.

So alſo the authority of the High Conſtables, and petty Conſtables ſeemeth to remaine notwithſtanding the death of the king &c. for that their authority is by the common Law, and to their ſaid office the conſeruation of the Peace remaineth as a thing incident, and vnſeperable from the ſame.

4.E.4.44. Br.Offic' 25. Dyer.165. Coroners alſo doe remaine conſeruators of the peace (within the County where they are Coroners) notwithſtanding the kings death, &c. for they are made by the Kings writ, and not by Commiſſion; and their authority doth remaine vntill they be remoued by the Kings writ: and their office remayning, the conſeruation of the peace remayneth as incident thereto.

P.Iuſt.4. Euery Iuſtice of Peace (before he ſhall take vpon him to exercise *Their oathes.*

erciſe the office of a Iuſtice of Peace) ſhall take two corporall Oathes; the one concerning the Office of a Iuſtice of Peace, the other concerning the Kings Supremacy.

The Oath concerning the Office, ſeemeth to be by force of the Statute made 13. *R.* 2. *cap.* 7. The forme of the Oath is, as followeth.

1. YEe ſhall ſweare, that as Iuſtice of the Peace in the County of Cambridge, in all Articles in the Kings Commiſſion to you directed, ye ſhal doe Egall right to the poore, and to the rich, after your cunning, wit, and power, and after the lawes and cuſtomes of the Realme, and Statutes thereof made: And ye ſhall not be of counſel of any quarrell hanging before you: And that yee hold your Seſſions after the forme of Statutes therof made: And the iſſues, fines, and amerciaments that ſhall happen to be made, and all forfeitures which ſhall fall before you, ye ſhal cauſe to be entred without any concealement (or embeſilling) & truly ſend them to the Kings Eſchequer; ye ſhall not let for gift, or other cauſe, but well and truely you ſhall doe your office of Iuſtice of Peace in that behalfe: And that you take nothing for your office of Iuſtice of the Peace to be done, but of the King, & fees accuſtomed, and coſts limitted by the ſtatute: And yee ſhall not direct, nor cauſe to be directed, any warrant (by you to be made) to the parties, but ye ſhall direct them to the Bayliffes of the ſaid Countie, or other the Kings officers (or miniſters) or other indifferent perſons, to doe execution thereof. So helpe you God, &c.

The parts of this Oath are ſhortly ſixe:

1 That they ſhall doe equall right to rich and poore, and according to the lawes and ſtatutes of the Realme.

2 That they ſhall not be of counſell with any perſon, in any matter depending before them.

3 That they ſhall keepe their Seſſions according to the ſtatutes (which, as it ſeemeth, ought to be in the weekes after Michaelmaſſe, after the Epiphany, after the clauſe of Eaſter, and after the tranſlation of S^t *Thomas*. 2. H. 5. 4. P. Iuſt. 5.

4 That all iſſues, fines, amerciaments, and forfeitures which happen before them, be by them truely entred, and ſent into the Eſchequer.

5 That they take nothing for doing their office, but of the King, and the accuſtomed fees appointed by the ſtatutes.

6 That they ſhall not direct any their Warrants to the parties, but to the Bayliffes of the County, or to other the Kings officers, or other indifferent perſons.

The

The other Oath concerning the Kings Supremacy, is by force
P.Crowne.4. of the Statute made *primo Eliz. cap.* 1. The forme of which Oath alſo followeth.

I *Michael Dalton*, do vtterly teſtifie and declare in my conſcience, That the Kings Highneſſe is the onely ſupreame gouernour of this Realme, and of all other his Highneſſe Dominions & Countries, as well in all Spirituall and Eccleſiaſticall things (or cauſes) as temporall: And that no forraine Prince, perſon, Prelate, State or Potentate, hath or ought to haue, any iuriſdiction, power, ſuperiority, preheminence or authority Eccleſiaſticall or Spirituall, within this Realme: And therefore I doe vtterly renounce & forſake all forraine iuriſdiction, powers, ſuperiorities, & authorities, and doe promiſe, that from henceforth I ſhall beare faith & true allegeance to the Kings highneſſe, his heires and lawfull ſucceſſors, and (to my power) ſhall aſſiſt and defend all iuriſdiction, priuiledge, preheminence, and authority graunted or belonging to the Kings highneſſe, his heyres and ſucceſſors, and vnited and annexed to the Imperiall Crowne of the Realme. So helpe me God, &c.

Cromp.11. P.Crowne.5. *vide.* The Iuſtices of Peace ought to take this Oath for the ſupremacie, in the open Seſſions where they ſhall ſerue by the ſtatute 5. *Eliz.* 1. (as Mr *Crompton* holdeth;) And it were very fitting ſo to be, or elſe to be taken at the Aſſiſes by the Iudges (leaſt by indirect practiſe) it be neglected.

Yet it is moſt vſual that both theſe Oathes are taken by a ſpeciall Commiſſion, (*viz.* by a Writ of *Dedimus poteſtatem*, directed out of the Chauncerie to ſome auncient Iuſtice of Peace, to take the ſame Oathes) which by them is to be certified into the ſame Court, at ſuch day as the Writ commandeth.

The Iuſtice of Peace (or other perſon to whom a *Dedimus poteſtatem* ſhall be directed, to take the Oathes of a new Iuſtice of Peace) if he ſhall returne the Commiſſion and the Oathes to be taken, when they were not taken, this is finable in the Starre-Chamber.

So if the new Iuſtice of Peace ſhall exerciſe this office, before he hath taken both theſe Oathes, he is likewiſe fineable in the Starre-Chamber.

Cromp.11. Alſo, if a Iuſtice of Peace ſhall not performe his Oath (concerning his office) it ſeemeth he is fineable in the Starre-Chamber,
Co.11.98.a. &c. Yet ſee *Co.* 11.98.a. That a man ſhall not be charged in any Court iudiciall for the breach of a generall oath, which he taketh when he is made an officer or miniſter, &c.

There

The Oath of Allegeance.

There is a third Oath, tending to the declaration of such duety as euery well affected subiect by bond of Allegeance, and by the Law of God ought to beare to his Soueraigne; which Oath is by force of the Statute 3. *Iac. cap.* 4. And is to be taken also by all Iustices of Peace (among others) by Statute 7. *Iacobi, cap.* 6. which Oath is vsually taken before the Iudges of Assise of the same County, where the parties (to be sworne) reside.

The forme of this Oath is thus:

I *Michael Dalton* doe truely and sincerely acknowledge, professe, testifie and declare in my conscience before God & the world, That our soueraigne Lord King IAMES, is lawfull and right full King of this Realme, and of all other his Maiesties Dominions and Countries; And that the Pope neyther of himselfe, nor by any authoritie of the Church or See of Rome, or by any other meanes (with any other) hath any power or authoritie to depose the King, or to dispose any of his Maiesties Kingdomes or Dominions, or to authorise any forreine Prince to inuade or annoy him, or his Countries, or to discharge any of his subiects of their Allegeance and obedience to his Maiestie, or to giue licence or leaue to any of them to beare Armes, raise tumult, or to offer any violence or hurt to his Maiesties royall person, State gouernement, or to any of his Maiesties subiects within his Maiesties Dominions. Also I doe sweare from my heart, that notwithstanding any declaration or sentence of excommunication or depriuation made or graunted, or to be made or graunted by the Pope or his successors, or by any authoritie deriued, or pretended to be deriued from him, or his See, against the said King, his heires or successors, or any absolution of the said subiects from their obedience: I will beare faith and true Allegeance to his Maiestie, his heires and successors, and him and them will defend to the vttermost of my power, against all conspiracies and attempts whatsoeuer, which shalbe made against his or their persons, their Crown and dignitie, by reason or colour of any such sentence or declaration, or otherwise, and will doe my best endeuour to disclose and make known vnto his Maiesty, his heires and successors, all Treasons and trayterous conspiracies, which I shall know or heare of to be against him or any of them. And I doe further sweare, That I doe from my heart abhorre, detest, and abiure, as impious and hereticall, this damnable doctrine & position, That Princes which be excommunicated or depriued by the Pope, may be deposed or murthered of their subiects, or any other whatsoeuer. And I doe beleeue, and in conscience am resolued, That neyther the Pope nor any other person whatsoeuer, hath power to absolue

solue me of this Othe or any part thereof, which I acknowledge by good and full authoritie to be lawfully ministred vnto me, and doe renounce all Pardons and Dispensations to the contrarie. And these things I doe plainely and sincerely acknowledge and sweare, according to these expresse words by me spoken, And according to the plaine and common sence and vnderstanding of the same wordes, without any equiuocation, or mentall euasion, or secret reseruation whatsoeuer. And I doe make this recognition and acknowledgement, heartily, willingly, and truly vpon the true faith of a Christian. So helpe me God.

Now considering that all the authority and power of these Commissioners or Iustices of the peace, ariseth partly out of their Commission, and partly out of the Statutes. I will first set downe the forme of the Commission it selfe, shortly considering the parts thereof.

The forme of the Commission of the Peace.

IACOBVS &c. *Predilecto & fideli Francisco Bacon militi, Domino Cancellario Angliæ, Thomæ Comiti Suff. Thesaurario Angliæ, &c. Salutem.*

Sciatis, quod Assignauimus vos, coniunctim & diuisim & quemlibet vestrum, Iusticiarios nostros, ad pacem nostram in Comitatu nostro Cantrabrigiæ conseruandam, Ac ad omnia Ordinationes & Statuta pro bono pacis nostræ ac pro conseruatione eiusdem, & pro quieto regimine & gubernatione populi nostri edita, in omnibus & singulis suis Articulis in dicto Comitatu nostro (tam infra libertates, quam extra) iuxta vim, formam, & effectum eorundem custodiendum, & custodiri faciendum. Et ad omnes, contra formam Ordinationum vel Statutorum illorum aut eorum alicuius, in Comitatu prædicto delinquentes, castigandum & puniendum, prout secundum formam Ordinationum & Statutorum illorum fuerit faciendum. Et ad omnes illos, qui alicui, vel aliquibus de populo nostro de corporibus suis, vel de incendio domorum suarum, minas fecerint, ad sufficientem securitatem de pace vel bono gestu suo, erga nos & populum nostrum inueniendam coram vobis, seu aliquo vestrum venire faciendum. Et si huiusmodi securitatem inuenire recusauerint, tunc eos in prisonis nostris (quous[que] huiusmodi securitatem inuenient) saluo custodiri faciendum. 1 Ad pacem conseruand.

Assignauimus etiam vos, & quoslibet duos vel plures vestrum (quorum aliquem vestrum, A.B.C.D.E.F. &c. vnum esse volumus) Iusticiarios nostros, ad inquirendum per Sacramentum proborum & legalium hominum de Comitatu prædicto (per quos rei veritas melius 2 Ad inquirendum.

scire poterit) de omnibus & omnimodis felonijs, veneficijs, incantationibus, sortilegijs, arte magica, transgressionibus, forstallarijs, regratarijs, ingrossarijs, & extortionibus quibuscunque: Ac de omnibus & singulis alijs malefactis & offencis (de quibus Iusticiarij pacis nostræ legitime inquirere possunt, aut debent) per quoscunque & qualitercunque in Comitatu prædicto factis siue perpetratis, vel imposterum ibidem fieri, vel attemptari contigerit: Ac etiam de omnibus illis qui in Comitatu prædicto in conuenticulis contra pacem nostram, in perturbationem populi nostri, seu vi armata ierunt, vel equitauerunt, seu imposterum ire vel equitare presumpserint: Ac etiam de omnibus hijs qui ibidem ad gentem nostram maihemandum, vel interficiendum in insidijs iacuerunt vel imposterum iacere præsumpserint: Ac etiam de hostellarijs, & alijs omnibus & singulis personis, qui in abusu ponderum vel mensurarum, siue in venditione victualium, contra formam Ordinationum et Statutorum vel eorum alicuius, inde pro communi vtilitate Regni nostri Angliæ & populi nostri eiusdem, editorum delinquerũt, vel attemptauerunt, seu imposterum delinquere, vel attemptare præsumpserint in Comitatu prædicto: Ac etiam de quibuscunque Vicecomitibus, Balliuis, Seneschallis, Constabularijs, Custodibus Gaolarum, & alijs officiarijs, qui in executione officiorum suorum (circa permissa seu eorum aliqua) indebite se habuerunt, aut imposterum indebite se habere præsumpserint, aut tepedi, remissi vel negligentes fuerunt, aut imposterum fore contigerit in Comitatu prædicto: Et de omnibus & singulis articulis & circumstantijs, & alijs rebus quibuscunque, per quoscunque et qualitercunque in Comitatu prædicto factis, siue perpetratis, vel quæ imposterum ibidem fieri, vel attemptari contigerit, qualitercunque præmissorum, vel eorum alicuius, concernentibus plenius veritatem. Et ad indictamenta quæcunque sic coram vobis seu aliquibus vestrum, capta, siue capienda, aut coram alijs nuper Iusticiarijs pacis in Comitatu prædicto facta, siue capta (& nondum terminata) inspiciendum: Ac ad processus inde versus omnes & singulos, sic indictatos, vel quos coram vobis imposterum indictari contigerit (quousque capiantur, reddant se, vel vtlagentur) faciendum & continuandum. Et ad omnia & singula felonias, veneficia, incantationes, sortilegia, artes magicas, transgressiones, forstallarias, regratarias, ingrossarias, extorsiones, conuenticula, indictamenta prædicta, cæteraque omnia et singula præmissa, secundum leges et Statuta Regni nostri Angliæ (prout in huiusmodi casu fieri consueuit aut debuit) Audiendum & Terminandum, et ad eosdem delinquentes, & quemlibet eorum, pro delictis suis, per fines, redemptiones, amerciamenta, forisfacturas, ac alio modo (prout secundum legem & consuetudinem Regni nostri Angliæ, aut formam Ordinationum vel Statutorum prædictorum, fieri consueuit aut debuit) castigandum & puniendum.

Indictamenta Capere.

Processus facere.

Ad audiend & terminand.

Prouiso

Prouiso semper quod si Casus difficultatis super determinati- Exceptio.
one aliquorum præmissorum coram vobis vel aliquibus duobus vel pluribus vestrum euenire contigerit : tunc ad iudicium inde reddendum, nisi in præsentia vnius Iusticiariorum nostrorum, de vno vel de altero Banco, aut Iusticiariorum nostrorum ad Assisas in omitatu prædicto capiendas assignatorum coram vobis vel aliquibus duobus, vel pluribus vestrum minime procedatur.

Et ideo vobis, & cuilibet vestrum mandamus quod circa custodiam pacis, Ordinationum, Statutorum & omnium & singulorum cæterorum præmissorum, diligenter intendatis. Et ad certos dies, & loca, quæ vos vel aliqui huiusmodi, duo vel plures vestrum (vt prædictum est) ad hoc prouideritis, super præmissis faciatis Inquisitiones, & præmissa omnia & singula audiatis & terminetis, ac ea faciatis & expleatis in forma prædicta, facturi inde quod ad Iusticiam pertinet, secundum legem & consuetudinem Regni nostri Angliæ : Saluis nobis amerciamentis, & alijs ad nos inde spectantibus. Charge to the Iustices.

Mandamus enim tenore præsentium vicecomiti nostro Cantabrigiæ, quod ad certos dies & loca (quæ vos vel aliqui huiusmodi duo vel plures vestrum vt prædictum est, ei scire fecerit is) venire faciat coram vobis, vel huiusmodi duobus vel pluribus vestrum (vt dictum est) tot & tales probos & legales homines de Ballina sua (tam infra libertates quam extra) per quos rei veritas in præmissis melius sciri poterit & inquiri. To the Sheriffe.

Assignauimus denique te præfatum Iohannem Cotton *Militem, Custod. Rotulorum pacis nostræ in dicto Comitatu nostro. Ac propteria tu, ad dies & loca prædicta, Brevia, Præcepta, Processus, & Inditamenta prædicta, Coram te & dictis sociis tuis, venire facias, vt ea inspiciantur, & debito fine terminentur, sicut prædictum est. In cuius rei testimonium &c. Datum &c.* To the Custos Rotulor

This Commission hath two parts containing the power of the Iustices of Peace.

The first *Assignauimus* (or first part) of the Commission doth giue power to any one Iustice of Peace (more or all) to keepe and cause to be kept the peace, and all Ordinances and Statutes made for the conseruation of the Peace; and for the quiet gouernement of the people : As namely, the

Statutes made for Hue and Cry after Felons: And the Statutes made againſt Murtherers, Robbers, Felons, Nightwalkers, Affrayers, Armor worne *in terrorem*, Riots, Forcible Entries, and all other force and violence; all which be directly againſt the Peace; (The particulers whereof you ſhall finde more fully hereafter, and moſt of them vnder their proper titles. Stat Winch. 13.E.1.2.E.3.6 2.E.3.3.

By this firſt Clauſe in the Commiſſion, the Iuſtices of Peace haue as well all the ancient power touching the peace which the Conſeruators of the Peace had by the Common Law; as alſo that whole authoritie which the Statutes haue ſince added thereto. Lambert 45.

The meanes which the Iuſtices of Peace muſt vſe for the keeping of the Peace and for the execution of theſe Statutes, is as followeth.

For to preuent the breach of the Peace, the Iuſtice of Peace may ſende his Warrant for the partie, and may take ſufficient ſureties of him (by Recogniſance) for the Peace, or for the good behauiour (as the caſe ſhall require) And may ſende the partie to the Gaole for not finding ſuch ſureties.

But for theſe Statutes made for the Peace, they are to be executed according to ſuch preſcript and order, as themſelues doe deliuer; wherein, if no power at all be expreſly giuen to any one Iuſtice of Peace alone, then can hee not otherwiſe compell the obſeruation thereof (as it ſeemeth) then by admonition onely, In which behalfe if he ſhall not be obeyed, he may preferre the cauſe at the Seſſions, and to worke it to a preſentment vpon the Statute, And ſo (by the helpe of his fellow Iuſtices) to heare and determine thereof, as Law requireth. Lambert 47.

The ſecond *Aſſignauimus* in the Commiſſion, doth giue authoritie to any two Iuſtices of the peace (or more) the one being of the *Quorum*; (in theſe fiue things following.)

1 To enquire (by a Iury) of all offences mentioned within the Commiſſion.

2 To take and view all Indictments or Preſentments of the Iury.

3 To grant out Proceſſe againſt the offendors, thereby to cauſe them to come and anſwer.

4 To heare and try all ſuch offences (vpon any former or future Indictments) after the offendors be come in.

5 To

5 To determine thereof by giuing iudgement, and inflicting punishment vpon the offendors, according to the Lawes and Statutes.

But all the buſineſſe included within the ſecond *Aſſignauimus*, belongeth to the Seſſions of the Peace; And therefore I leaue (here) to write any further thereof.

Note alſo, that there be diuers Statutes which be not ſpecified within the Commiſſion, & yet are committed to the charge and care of the Iuſtices of Peace; But all ſuch Statutes which doe giue expreſly any power or authoritie to the Iuſtices of Peace, are a ſufficient Warrant and Commiſſion of themſelues, although they be not recyted in the Commiſſion: And all ſuch Statutes are alſo to be executed, according as the ſame Statutes themſelues doe ſeuerally preſcribe and ſet downe.

And, for that moſt of the buſineſſe and practiſe of the Iuſtices of Peace, doth conſiſt and lye in the execution of ſuch Statutes as are committed to their charge (whether they be ſpecified in the commiſſion, or not ſpecified there) the numbers of which Statutes are exceſſiuely increaſed of late yeeres, to the ouerburthening of all the Iuſtices of Peace (And the rather to giue ſome little helpe to ſuch Iuſtices of Peace who (being deſtitute of the aſſiſtance of ſuch as are learned in the Lawes) are daily to adminiſter Iuſtice, and to execute their office at home and out of their Seſſions) I haue for their better eaſe herein, indeauoured (in this Treatiſe) to ſet downe more orderly and particularly the ſeuerall parts and branches of euerie ſuch Statute by it ſelfe, vnder their proper titles, with further referments to the Statutes themſelues, or to the Abridgments.

Their power.

The Power and Authoritie of the Iuſtices of Peace (as well giuen them by the ſaid Commiſſion, as by the Statutes) is in ſome caſes Miniſteriall or Regular and limited, as a Miniſter onely; And in ſome other caſes *Iudiciall* or Abſolute, and as a Iudge;

Miniſteriall, when he is thereto commanded by a higher Authoritie,

As vpon { a *Supplicauit* (out of the Chauncerie or Kings Bench) for the taking of Suretie for the Peace, or good behauiour; (See hereof *tit.* Suretie for the Peace, *bis.*)
a Writ vpon the Statute of Northampton, vpon a Forcible Entrie; (See hereof *titulo*, Forcible Entrie.

In the execution of which two Writs, the Iustice of Peace may proceed no further, or otherwise, then he is authorised by such Writ; And is also to returne the Writ, and to certifie his doings therein, into the Court whence the Writ came.

But in all other cases the power of the Iustices of Peace, seemeth to be absolute (in some maner) so as they and euerie of them, may of their owne power exceed *ex officio*, and as a Iudge; yet this their power is also limited; for they may neither hang a man for a trespasse, nor fine him for a felonie; but must proceed in all thinges according as they are prescribed by the Commission, and by the said seuerall Statutes.

Discretion. And yet, for that all considerable circumstances can neither be comprehended in the Commission, nor foreseene at the time of the making of the Statutes, Therefore oftentimes some things are referred to the consideration of the Iustices of Peace, and left to be supplyed by them in their discretion.

The Commission of the Peace (in it selfe) doeth leaue little (or nothing) to the discretion of the Iustices of Peace, but doeth limit them to proceed *secundum Leges, Consuetudines, & Statuta.*

But by some late Statutes, some things are (therein by speciall wordes) referred to the discretion of the Iustices of Peace; Some out of Sessions, and some at their Sessions.

I will here only set downe some particulars of such thinges as are referred to their discretions out of their Sessions.

Some thinges referred to the discretion of one Iustice of Peace out of the Sessions, which you may more fully see hereafter in this Booke, in the seuerall Titles hereunder written.

Fish daies. FLesh killed in Lent, one Iustice of Peace may giue to the poore at his discretion.

Laborers. One Iustice may compell any person meete (in his discretion) to be bound an Apprentice.

One Iustice of Peace may cause all such persons as be meete to labour (by his discretion) to worke in Harueſt, and Hay time.

Malt. Maults that be deceiptfull, may be sold &c. at such reasonable prices, as one Iustice of Peace (in his discretion) shall thinke expedient.

Plague. One Iustice of Peace (as it seemeth) may (by his discretion) giue directions to the searchers, watchmen, and keepers &c. of persons infected with the plague.

Trespasse. Trespassers in Corne, Orchards, Hedges, or Woods, which (in the discretion of the Iustice) are not thought able to giue satisfaction, shall be whipped.

It

It ſeemeth that one Iuſtice of Peace may heare and determine by examination or otherwiſe, by his diſcretion, the offences committed in Tile making. *Tile.*

Some thinges referred to the diſcretion of two Iuſtices of Peace out of the Seſſions.

TWo Iuſtices may allow and diſcharge Alehouſe-keepers as they ſhall thinke meete. *Alehouſe.*

Two Iuſtices may take Recogniſance of Alehouſe-keepers for keeping good orders &c. according to their diſcretions.

Two Iuſtices may appoint ouerſeers of woollen Cloth, by the yeere or for ſhorter time (by their diſcretions.) *Cloth.*

Clothiers, their workefolkes imbeaſelling any part, ſhall be puniſhed &c. by the diſcretion of two Iuſtices.

Seruants &c. aſſaulting their Maſter, may be impriſoned for one yeere, or leſſe, at the diſcretion of two Iuſtices. *Laborers.*

Two Iuſtices may (by their diſcretion) compell women to ſerue, and for ſuch wages, and in ſuch ſort, as they thinke meete.

Two Iuſtices may taxe others of the Countie (by their diſcretions) towards the reliefe of places infected &c. *Plague.*

Two Iuſtices may taxe any in the Hundred (by their diſcretions) towards the reliefe of the poore of any Towne that is ouercharged. *Poore.*

Two Iuſtices may diſpoſe of all forfeitures, to grow vpon the Statutes of Rogues (at their diſcretions &c. *Rogues.*

Two Iuſtices may aſſeſſe (according to their diſcretions) proportionably, all the Pariſhes within the Hundred towards a contribution, for the parties charged vpon a robberie &c. *Robbery.*

Two Iuſtices ſhall take order (by their diſcretion) to ſet poore Soldiers &c. to worke, that cannot get worke, And for want of worke, may taxe the Hundred (by their diſcretions) for the reliefe of ſuch Soldiers &c. *Soldiers*

Two Iuſtices may fine (by their diſcretions) the head officers in Boroughes, and Market Townes, that doe not view &c. all weights and Meaſures, or doe not breake and burne the defectiue. *Weights.*

Two Iuſtices may fine (by their diſcretions) all buyers, and ſellers, with vnlawfull weights and meaſures.

There be ſome other Statutes, and ſome other Caſes wherein the diſcretion of the Iuſtices of Peace (out of their Seſſions) is tollerated; But the Councell of Cicero hereinis to be obſerued; *Sapientis eſt Iudicis, cogitare tantum ſibi eſſe permiſſum, quantum ſit Commiſſum ac creditum.*

Alſo

Also the sayings of the late reuerend Iudge and Sage of the Law (in his fifth part in Rookes case, and in his tenth part in Kigheleys case) are worthy obseruation, *&c.* That discretion is a knowledge or vnderstanding to discerne betweene truth and fallhood, betweene right and wrong, betweene shadowes and substance, betwene equitie and colourable glosses and pretences, and not to doe according to our willes and priuat affections, for *talis discretio discretionem confundit*, And therefore in both the recited Cases, it was holden, that though the words in the Commission of Sewers doe giue authority to those Commissioners, to do according to their discretions, that yet their discretion and proceedings ought to be limitted and bounded with the rules of Reason, Law, and Iustice; Againe, Discretion (saith he) is *scire per legem quid sit iustum.* And therefore, euery Iudge, Iustice, (or Commissioner) ought to haue *duos Sales*, viz. *Salem sapientiæ, ne sit insipidus, Et salem conscientiæ, ne sit diabolus.* Coke 5. fol. 8. 10. 14. 20.

And (as Mr. *Lambert* well said) no way better shall the discretion of a Iustice of peace appeare, then if he (remembring that he is *lex loquens*) shall confine himselfe within the lists of Law; And shal not vse his discretion but only where the Law permitteth, and the present case requireth.

In all cases therefore where the Statutes doe referre the tryall of offendors (or hearing and determining of offences) to the discretion of the Iustice or Iustices of peace (out of Sessions) it is verie requisite that vpon such tryall or hearing the said Iustices take due examination (of the offendors themselues, or of credible witnesses) as well concerning the fact it selfe, as the circumstances thereof, and vpon confession, or other due proffe of the offence, Then to proceed according to Law and Iustice.

Vide tit. Heare & determine. Note, that in all cases where the Statute referreth the tryall &c. to the discretion of the Iustices, the said Statutes themselues seem also to enable the said Iustices of Peace, to take the examinations of witnesses, and that vpon Othe.

Note further, that the Iustices of Peace, out of their Sessions, are now armed with farre more ample authoritie and power, then the auncient Conseruators of the Peace were: For the Iustices of Peace haue double power giuen them, The one of Iurisdiction, to conuent the offendors before them (by their warrant) and to examine, heare, and determine the cause; The other of Coertion (*scil.* after the cause heard) to constreyne them to the obedience and obseruance of their Order and Decree, which notwithstanding must be according to the rules of Law and Iustice, as is aforesaid: whereas the auncient Conseruators of the Peace had no Iurisdiction or authoritie at all, either to conuent

the

the offendor before them, or to examine, heare, or determine the cauſe, but had onely coertion, prehenſion (or puniſhment of an offendor) in ſome few caſes, as you may ſee before touching Conſeruators of the Peace.

And here I muſt further put the Iuſtices of Peace in minde, that their authoritie and power is limitted to be by them exerciſed, only within the County or Counties where they be in Commiſſion; And yet in that or thoſe Countie or Counties, the Iuſtices of Peace of the County muſt not intermeddle in any City there, which is a Countie of it ſelfe; Nor in any Citie or Corporat Towne there (though it be no Countie of it ſelfe, but within the Countie) which haue their proper Iuſtices of Peace within themſelues, by the kings Charter or Commiſſion (eſpecially if in ſuch Charter there be any words of prohibition, that the Iuſtices of the ſhire, *Non ſe intromittant*, &c.) Except ſuch country Iuſtices, ſhall alſo be in Commiſſion in ſuch citie or towne corporat.

Plo. 37

Vide tit. Robberie.

Lamb. 48. 69. Cromp. 8. & 181.

But in other Corporat Townes, which haue not their proper Iuſtices of Peace, As alſo in all Liberties and Franchiſes (within the Countie) which haue the returne of Writs, but haue not their proper Iuſtices, their the Iuſtices of Peace of the county, ought to execute their authority, & that by the words of their Cõmiſſion.

Cromp. ibidem

Againe, if a Pariſh ſhall extend into two or more Counties; Or if part thereof ſhall lye within the Liberties of any Citie or Towne Corporat (which haue their proper Iuſtices) and part without, Then as well the Iuſtices of Peace of euerie Countie, as alſo the Iuſtices (or officers) of ſuch Citie or Towne Corporat, ſhall intermedle onely within their owne proper and diſtinct Limits and bounds (*ſc.* within ſo much of the ſaid Pariſh &c. as lieth within their ſeuerall Liberties and Limits) and not to inuade or deale in other Iuriſdictions; For it ſhall be againſt Law and reaſon, where Offices and Iuriſdictions are ſeuerall, that the one ſhould intermedle within the Iuriſdictions of the other.

Vide tit. Poore

Coke 4. 40

Neither ſhall any Iuſtice of Peace deale in or puniſh any treſpaſſe or other like offence, committed in any other Countie (againſt any penall Statute) though ſuch offendor ſhall be brought before him (ſee *tit. poſtea*, vnlawfull Games, Labourers, Partridges) Except the Statute ſhall ſpecially enable them thereto; As the Statutes 1. *Iac. et* 7. *Iac.* (ſee *tit.* Partridges Peace & the like) Or that it be for matters of the Peace, or in caſes of Felonie (ſee *tit.* Affraies and Felonie.)

Vbi quis delinquit, ibi puniet. See *tit.* Homicide.

33. H. 8. cap. 6. 5. Eliz. P. 12. 23. Eliz. cap. 10

Neither ſhall any Iuſtice of Peace, for the time that he ſhall make his aboade or be out of the Countie (where he is in Commiſſion) intermedle to take any Recogniſance, or any examination, or otherwiſe to exerciſe his authoritie within the Countie where

where he is in Commission as it seemeth (see *tit.* Affray, Robberie, Warrants.) For being out of the County where he is in Commission, he is but as a priuate man.

Now my purpose is to set downe more particularly, what things the Iustices of Peace out of their Sessions of the Peace, may doe in the execution of their Commission; Or of the Statutes wherewith they are charged: And herein you must obserue that some thinges are permitted to be executed by any one, two, or more Iustices: And some other thinges are more specially appointed and appropriated (by some Statutes) to some one certeine Iustice of peace, or to two or moe Iustices, either in regard that such Iustice or Iustices, is or are next to the place, or are of the *Quorum*, or the like.

And here note that whatsoeuer any one Iustice of peace alone may doe (either for the keeping of the peace, or in other execution of the Commission or Statutes) the same also may lawfully be done and performed, by any two or moe Iustices.

But where the Law giueth authority to two, there one alone can not execute this. For *vna persona non potest supplere vicem duarum, Et plus vident oculi quam oculus.* Co. 4. 45.

Also when things by Statute are appropriated to some one certain Iustice, or to moe, there such Iustice or Iustices are to pursue such their authority accordingly: And yet if such Iustice or Iustices shall therein ioyne with any other Iustice of the same Countie, it may seeme no lesse lawful & warrantable, *tamen quære et vide* Co. 11. 92. where an authoritie is giuen to foure, or to one of them, if two of them shall execute this, it seemeth they haue not pursued their authoritie. Co. 11. 92. a

Belids there seemeth a general rule to be put in *Stradlings* case (in Mr. *Plow.*) that when a thing is appointed (by any Stat.) to be done by or before one person certain, that such thing can not be done by or before any other; But that it ought to be done as the Statute hath appointed; & by such expresse designation of one (or power giuen to one) certeine person, all others are excluded. Plo. 206. b. See Co. 11. 59. & 64.

And yet, whereas by the Statute of 18. *Eliz.* the order to be taken for a Bastard child, is appropriated to two Iustices of Peace (one being of the *Quorum*) in or next vnto the Parish where such child shalbe borne; if two such Iustices can not agree vpon the reputed father (or in making such order, or in other execution of that Stat.) *Quære* what is to be done, I haue known the case lately moued to the Iudges of Assise, who thought it fit that such difference between the two Iustices of peace should be referred to the hearing of the whole Bench, & the matter to be reexamined by them, & what order should be therin set down by the Bench, the same to stand good. 18. Eliz. cap. 3.

But

But in ſuch thinges appropriate to ſome one or more Iuſtices of Peace, if without ſuch Iuſtice or Iuſtices, all (or any of) the reſidue of the Iuſtices of that County ſhall intermedle therein; Such their doings ſeemeth noe waies warrantable, but ſuch their proceedings to be *Coram non Iudice*, And that their is no neceſſity to obey them therein, as being no lawfull Iudges of the cauſe.

Alehouſes.

Alehouſes, &c.

What thinges one Iuſtice of Peace alone, may doe out of the Seſſions: And where the ayde or aſſiſtance of two Iuſtices of Peace (or more) is required.

One Iuſtice.

EVery Alehouſekeeper, Inkeeper, and Victualer, which ſhall ſuffer any Towneſman (or any Laborer, or Handicrafts-man, working in the ſaid Towne) to remaine and continue drinking in their ſaid houſe (contrarie to the Statute 1. *Iac. Cap. 9.*) the ſaid offence being ſeene by any Iuſtice of Peace within his limits, or being proued before any Iuſtice of Peace by two witneſſes vpon Othe, euery ſuch Alehouſekeeper &c. ſhall forfeit for euery ſuch offence, x.s. 1 Iac. 9. P. 6.

If any Inkeeper, Alehouſekeeper or Victualer, ſhal vtter or ſel leſſethen onefull Ale quart of the beſt Beere or Ale for j.d. And of the ſmall, two quartes for j.d. (the ſaid offence being proued before any Iuſtice of Peace by two witneſſes vpon Othe) Then euery ſuch Innekeeper, &c. ſhall forfeit for euery ſuch offence, twentie ſhillings. 1. Iac. 9. P. 7.

Euery perſon that ſhall continue drinking in any Inne or Alehouſe, &c. in the Towne where he then dwelleth (contrarie to the former Statute) the ſaid offence being ſeene by any Iuſtice of Peace, or being proued before any Iuſtice of peace as aforeſaid, ſuch perſon ſhall forfeit for euery ſuch offence, three ſhillings foure pence. 4. Iac. 5.

Euery Iuſtice of peace (within his Limittes) hath authority to miniſter the ſaid Othe to ſuch witneſſes. 1. Iac. 9. P. 6.

All and euery the forfeitures aforeſaid, ſhall be to the vſe of the poore of the Pariſh where ſuch offence ſhall be committed: And the ſaid forfeitures are to be leuied by Diſtreſſe (of the offendors goods) by the Conſtables or Churchwardens of the ſame Pariſh, vpon a warrant from one (or more) Iuſtice of peace vnder his or their hand and ſeale. 1. & 4. Iac. P. 7. 8.

For euery offence aforeſaid, the Alehouſe-keeper, and Innekeeper

1.Iac.9. P.7. keeper,&c.for want of ſufficient diſtreſſe to be taken,for ſuch forfeitures, ſhall (by any one Iuſtice of Peace) be committed to the common Gaole, there to remaine, vntill the ſaid penaltie bee payed.

4.Iac.5. Euerie Towneſman that ſhall continue drinking in any Inne or Alehouſe,contrary to the Statute (for want of ſufficient diſtreſſe,and not being able to pay the ſaid forfeiture of three ſhillings foure pence,) ſhall be ſet in the Stockes, for euery ſuch offence,foure houres (vpon warrant, or commandment,from any one ſuch Iuſt.of Peace.)

1.Iac.9. P.8. If the Conſtables and Churchwardens, ſhall neglect(to leuy) or ſhall not leuy the ſaid ſeuerall forfeitures; or in default of diſtreſſe ſhall neglect (by twenty dayes) to certifie the ſame defaults of diſtreſſe to the Iuſt.of Peace: then euerie ſuch Conſtable and Churchwarden ſhall forfeit for euerie ſuch default fortie ſhillings to the vſe of the poore, to be leuyed by diſtreſſe (of the offendors goods) by warrant made to any other indifferent perſon,from any one (or moe) Iuſt. of Peace: And for want of ſufficient diſtreſſe, ſuch Conſtables and Churchwardens, to be(by any ſuch Iuſt.of P.) committed to the common Gaole, there to remaine vntill they haue payed the ſame forfeiture.

Br.Ace' ſur' 92. 5.E.4.3. If a common Inne-holder,or Alehouſe-keeper will not lodge a trauailer, any Conſtable (or Iuſtice of Peace) may compell him thereto; but how the officer ſhall compell him, *quære*: it ſeemeth that all the officer can do, is rather to cauſe ſuch Alehouſe-keeper to be ſuppreſſed; or elſe to preſent or preferre ſuch offence at the Seſſions of the peace, that ſo ſuch offendor may be thereupon indicted. See the Commiſſion.

Two Iuſtices. 5.Ed.6.25. P.2. Any two Iuſtices of Peace (the one being of the *Quorum*) may allow the keeping of any common Alehouſe, or tipling houſe; and ſhall (from time to time) take Bond with ſuertie by Recogniſance of ſuch Alehouſe-keepers, as well againſt the vſing of vnlawfull games, as alſo for the keeping of good rule & order in their houſes, according to the diſcretions of the ſame Iuſtices.

There ſhall be payed for ſuch Recogniſance but xij. d. And the ſaid Iuſtices ſhall certifie the ſame Recogniſance at their next quarter Seſſions (vpon paine of fiue markes) *ibidem*.

5.E.6. P.1. Any two Iuſtices of Peace(the one being of the *Quorum*) may remoue,diſcharge,and put down any Alehouſe,where they ſhall thinke meet.

The Alehouſe-keeper put downe or diſcharged, by any two ſuch Iuſtices of Peace, cannot be allowed againe by any other

two, or moe Iuſtices of Peace, except it be in open Seſſions (as Sir *Peter Warberton* deliuered in his charge at Cambridge Aſſiſes, *Anno Domini* 1613.)

Any two Iuſtices of Peace (the one being of the *Quorum*) may commit to priſon (for three dayes, without bayle) thoſe that keep common Alehouſes, or that vſe common ſelling of Ale, or Beere, obſtinately of their own heads, without allowance by two ſuch Iuſtices; or contrary to the commandement of two ſuch Iuſtices: And the ſaid two ſuch Iuſtices (before the deliuery of ſuch offendors) ſhall take Recogniſance of them with two ſuerties, that he or they ſhall keepe no more a common Alehouſe, &c. according to the diſcretion of the ſame Iuſtices; and ſhall certifie ſuch Recogniſance, diſcharge, & offence, at their next quarter ſeſſions: which certificat ſhall be a ſufficient conuiction in Law of the ſame offence, without any further triall thereof to be had. P.4.

And it ſeemeth (by the letter of the Statute) that the Alehouſe-keeper put downe or diſcharged by two ſuch Iuſtices, if (contrary to their commaundement) hee ſhall vſe common ſelling of Beere or Ale againe, though allowed by other Iuſtices of P.) yet the two Iuſtices that firſt diſcharged him, may put him downe againe, and may commit him to the Gaole for ſelling contrary to their commandement. And yet the ſtatute alloweth common victualling in Fayres though vnlicenſed. 5.E.6. P.1,4. P.5.

Any two Iuſtices of Peace may giue allowance to Labourers, &c. for vrgent and neceſſary occaſions, to remaine in an Inne, Alehouſe, or victualling houſe. P.6. 1.Iac.9.

Innes. Common Innes are appointed for trauellers and wayfaring men, *Co.* 8.32. And therfore if any Inne-keeper ſhal ſuffer perſons inhabiting in the ſame towne, or any other perſons (contrary to the ſtatute) to be vſually tippling in his houſe; ſuch an Inne-keeper may be accompted as well an Alehouſe-keeper, as an Inne-keeper, & may be bound by Recog. with ſuerties, for the keeping of good order, as Alehouſe-keepers are: and ſo Iudge *Warberton* deliuered it in his charge at Cambridge Aſſiſes, *Ann. Dom.* 1613. Or elſe it ſeemeth they may be committed as Alehouſe-keepers without Licence. Co.8.32.

Alſo it hath been agreed for Law, That ſuch Innes as haue bin erected ſince the Statute of 5. *Ed.6. cap.*25. and were not Innes before, ought to haue Licence; & that ſuch Inne-keepers are to be bound by Recogniſance with ſuerties for keeping of good orders, as Alehouſe-keepers are. Cromp.77.

His Maieſtie, in his late Speech in the Starre-Chamber, hath iuſtly excepted againſt the abundance of Alehouſes, and more ſpecially *Anno* 1616.

cially againſt the infamous, & blinde Alehouſes, as being haunts and receipts for Robbers, Theeues, Rogues, Vagabonds, and other idle, looſe, and ſturdy fellowes: And therfore here I thought good to put the Iuſtices of P. in minde, that in allowing of Alehouſes they haue a regard as well to the perſon, as the place; for all perſons are not fit to be allowed for Alehouſe-keepers, neither are all places meete for an Alehouſe.

As if the party be in Liuery, or a Reteyner to any man, Bayliffe of a Hundred, Conſtable, &c. or be one that is not of good fame, or gouernement; ſuch perſons are not fit to be allowed to be Alehouſekeepers. *The perſon.*

Alſo there are ſome perſons, that by Law are diſabled to keep an Alehouſe (at leaſt for a certaine time) as,

1 The Alehouſe-keeper conuicted (according to the Stat. *primo Iac. 9.*) for ſuffering townesmen, &c. to continue drinking in his houſe (contrary to the ſaid Statute, which ſee here *pag.* 24) ſuch Alehouſe-keeper is diſabled to keepe any Alehouſe for three yeares after ſuch conuiction. 7. Iac. 10.

2 So the Alehouſe-keeper conuicted (as aforeſaid) for not ſelling one full quart of their beſt Beere & Ale for one peny, and of the ſmall two quarts for one peny (which ſee in this title a little before) ſuch Alehouſe-keeper alſo is diſabled for three yeares to keepe an Alehouſe. 7. Iac. 10.

3 The Alehouſe-keeper that ſhall continue drinking in another Alehouſe or Inne, in the ſame towne where he dwelleth (the ſaid offence being ſeene by any Iuſt. of P. within his Limits, or being proued before any Iuſt. of P. by two witneſſes vpon oath.) euery ſuch Alehouſe-keeper alſo is diſabled for three yeares after ſuch conuiction, to keepe any Alehouſe, as it ſeemeth vpon conference of theſe two Statutes. 4. Iac. 5. 7. Iac. 10.

4 So the Alehouſe-keeper that ſhalbe drunken, & therof lawfully conuicted (by indictment at the Aſſiſes, Seſſions, of the P. or in a Leet) is diſabled for three yeares to keepe any Alehouſe. 4. Iac. 5. 7. Iac. 10.

5 The Alehouſe-keeper that is diſcharged or put downe by any two Iuſt. of P. the one being of the *Quorum*, &c. is alſo diſabled, &c. See *pag* 25. 26.

Alſo in Townes which are no through-faire, the Iuſtices ſhall doe well to be ſparing in allowing of any Alehouſes (except it be at the ſuit of the chiefe inhabitants there, and to ſupply the wants of their poore.) *The place.*

Alſo the Alehouſes to be allowed are meeteſt to be about the middeſt of the Towne; but not to be in any corners, or places out of, or diſtant from the towne, except vpon the riuers ſide, and where there is great need.

Affray.

AFfray, is deriued of the French word, *Effrayer*, which ſignifieth to terrifie, or bring feare, and which the Law vnderſtandeth to be a common wrong; and therfore I will ſhew you what euery man may doe in ſuch caſes.

Euerie priuate man. Euery priuate man being preſent before, or in and during the time of an Affray, ought to ſtay the Affrayors and to part them, and to put them in ſunder, but may not hurt them, if they reſiſt him (for that he is but a priuate man.)

An Affray being in the ſtreet, if any other ſhall come with harneis or weapon, to ioine with either party; euery perſon preſent, or that ſeeth it, may ſtay them till the Affray be ouer.

Alſo euery priuate man (being preſent) may ſtay the Affrayors vntill their heate be ouer, and then may deliuer them to the Conſtable, to impriſon them till they find ſuerty for the peace. Lambt. 134.

If any perſon be dangerouſly hurt in an Affray (or otherwiſe) euery perſon may arreſt the offender, and carry him to the Gaole, or to a Iuſtice of peace (who is either to baile him vntill the next Goale deliuery, or to commit him to the Gaole, vntil it be known whether the party hurt will liue, or die thereon.) 3. H. 7. cap. 1. Br. Coron. 225.

The Conſtable. The Conſtable in ſuch caſes is armed with a more large authoritie, for he may and ought to command the Affrayors, or ſuch as are about to make an Affray, to auoid or ſurceaſe, and to depart; And if the Conſtable (being preſent at an Affray) doth not his beſt endeuour to part them, it being preſented at the Seſſions of the peace, ſuch Conſtable ſhall be deepely fined for it.

If the Affrayors will not depart, but ſhal draw weapon, or giue any blow, the Conſtable may command aſſiſtance of others for the pacifying of the Affray, and may iuſtifie the hurting of them, if they make reſiſtance. 3. H 7. 10. Lambt. 135.

The Conſtable may in the Kings name make proclamation (if the Affray be great or dangerous) that the Affrayors ſhall keepe the K. peace & depart, &c. *Tamen quære, et vide Br. proclam'* 1, 10. Lambt. 135.

The Conſtables may commaund the Affrayors to priſon for a ſmall time, till their heat be ouer; yea they may impriſon the Affrayors, till they finde ſuerties for the peace. And if any of the parties hath receiued any dangerous hurt in the Affray, the Conſtable ought to arreſt and carry the offendor to the Gaole (or to a Iuſtice of Peace) to the end he may finde ſuerty to appeare at the next Gaole deliuery: and the Conſtable may iuſtifie the beating, &c. of ſuch an offendor, if he will not obey the arreſt, but make reſiſtance, or flyeth. *Vide titulo* Conſeruators of Peace. Lambt. 136. 38. E. 3. 8. & 11.

Note,

Note, that it is properly no Affray, vnleſſe there be ſome weapons drawn, or ſome ſtroke giuen, or offered to be giuen, or other attempt to ſuch purpoſe: for if men ſhall contend only in hote words, this is no Affray, neither may the Conſtable for words only lay hands vpon them, vnleſſe they ſhall threaten to kill, beat, or hurt one another; & then may the Conſtable arreſt ſuch perſons (to goe before ſome Iuſtice of Peace, to finde ſuerties for the keeping of the peace) and yet ſuch threatning is no Affray.

If the Affray be in an houſe (& the doores ſhut) the Conſtable may breake into the houſe to ſee the peace kept.

If the Affrayors flie into another mans houſe, the Conſtable (in freſh ſuit) may breake into the houſe, and apprehend the Affrayors. 7.*E.*3.19.

Plo.37.a. Cromp.146.b. & 172.b. If the Affrayors flye into another County, the Conſtable (or Iuſtice of peace) ſeeing this, may in freſh ſuite purſue, or cauſe them to be purſued, & to be taken there; but they can then meddle no further, but (as euery priuate perſon may do) to carry them before ſome Iuſtice of Peace of the County where they are taken, to cauſe them to finde ſuerty for the peace.

Cromp.146. But if the Affrayors flye into a Franchiſe within the ſame County, the Conſtable (or Iuſtice of Peace) ſeeing this, may in freſh ſuit purſue and take them out of ſuch Franchiſe.

38.H.8.Br. F.Imp.6. After the Affray (it ſeemeth) the Conſtable, without a Warrant, cannot arreſt the Affrayors, except ſome perſon be in perill of death by ſome hurt there receiued.)

The Iuſtice. Euery Iuſtice of Peace may doe that, which euery Conſtable, or priuate man, may doe by the Common Law herein.

9.Ed.4.3. Cromp.195. 196. Beſides, euery Iuſtice of Peace (within his Limits) may preſently after the Affray, commit the offendors, vntill they haue found ſuerty for the peace, if the Affray were in his preſence. And if the Affray were not in his preſence, then vpon complaint, or vpon his owne diſcretion he may after make his warrant to take and commit ſuch offendors, vntill they haue found ſuerty for the Peace. See the title Suerty for the Peace.

If an Affray be made in the preſence of a Iuſtice of Peace, he may lay hands vpon, & arreſt the offendors to finde ſuerties, &c. and may take away their weapons.

Euery Iuſtice of Peace (in his owne diſcretion and *ex officio*) may binde all ſuch to the Peace, as in his preſence ſhall ſtrike another, or ſhall contend onely in hote words. See the title Suertie for the Peace.

F.Iuſt.P.173. 10.H.7.20. Cromp.154. If any perſon be dangerouſly hurt, in an Affray (or otherwiſe) euery Iuſtice of Peace within the yeare and day after ſuch hurt) may commit to the Gaole ſuch offendors, there to remaine vntill the day and yeare be expired, Or that the ſaid offendors ſhal find

ſuerties to appeare at the next generall Gaole deliuery, to anſwer to the felony, if the partie hurt happen to die within the yeare after the hurt.

If an Affray, or Aſſault, ſhall be made vpon a Iuſtice of Peace (or Conſtable) they may not onely defend themſelues, but may alſo apprehend, & commit the offendors, vntill they haue found ſuerties for the peace: the Iuſtice of Peace may ſend them to the Gaole; but the Conſtable muſt commit them to the Stockes for the preſent, & after carry them before a Iuſt. of P. or to the Gaole. 5.H.7.6.

Armour.

One Iuſt. IF any perſon ſhall ride, or goe Armed offenſiuely, before the Iuſtices, or any other the Kings officers; Or in Faires, Markets, or elſewhere (by night, or by day) in affray of the Kings people, (the Sheriffe, and other the Kings officers, and) euery Iuſtice of peace (vpon his owne view, or vpon complaint, thereof) may cauſe them to be ſtayed and arreſted, & may binde all ſuch to the peace, or good behauiour (or, for want of ſuerties, may commit them to the Gaole) And the ſaid Iuſtice of P. (as alſo euery Conſtable) may ſeiſe & take away their Armour, and other weapons, and ſhall cauſe them to be prayſed, and anſwered to the King as forfeited: and this the Iuſtice of Peace may doe by the firſt *Aſſignauimus* in the Commiſſion. See hereof *Intea titulo* Peace. 2.E.3.cap.3. P.1. Lambert. offic' of a Conſt. 133.

See the title, Suertie for the Peace. So of ſuch as ſhal carry any Daggs or Piſtolls that be charged: or that ſhall goe apparelled with priuie Coats or Doublets, the Iuſtice may cauſe them to finde ſuerties for the Peace, and may take away ſuch weapons, &c.

And yet the Kings ſeruants in his preſence; and Sheriffes and their officers, in executing the Kings proceſſe; and all others in purſuing Hue and Crie, where any felony, or other like offences be done, may lawfully beare Armour or weapons.

Alſo (it ſeemeth) that any Iuſtice of Peace may commaund that weapons be taken from ſuch priſoners, as at any time ſhalbe brought before him.

Alſo if any ſeruant to husbandry, or to any Artificer, or Victualler, or any Laborer, ſhall beare any ſword, or dagger, it ſeemeth euery Iuſtice of P. may impriſon them till they haue found ſuerties for the Peace, & may ſeiſe & take away their ſaid weapons. 15.R.2. P.3.

Barrettor.

EVery Iuſtice of Peace (vpon his diſcretion) may binde to the peace, or good behauiour, ſuch as are common Barrettors. 9.E.4.3. Lambert.79.

Now

Co.8.36. Now a common Barrettor is he, who is eyther a common mouer and ſtirrer vp (or mainteyner) of ſuits in Law, in any Court, or elſe of quarrels in the Countrey;

In Courts. As if in any Court of Record, County Court, Hundred, or other inferiour Courts, any perſon, by fraud and malice vnder colour of Law, ſhal themſelues maintaine (or ſtirre vp others vnto) multiplicitie of vniuſt and feyned ſuits, or informations (vpon penall Lawes,) or ſhall malicioufly purchaſe a ſpeciall *Supplicauit* of the Peace, to force the other partie to yeeld him compoſition; all ſuch are Barrettors.

In the Countrey. In the countrey; and theſe are of three ſorts:

1 Diſturbers of the peace, *viz.* ſuch as are either common quarrellers or fighters in their owne cauſe; or common mouers, or mainteyners of quarrels, and affrayers betweene others.

2 Common takers, or deteyners (by force, or ſubtilty) of the poſſeſſion of houſaes, lands, or goods which beene in queſtion.

3 Inuenters and ſowers of falſe reports, whereby diſcord ariſeth betweene neighbours: all theſe are Barrettors.

Co.8.37. But all ſuch perſons muſt be common Barrettors, *ſc.* not in one or two, but in many cauſes.

Baſtardie.

Lamb.132. EVery Iuſtice of Peace, vpon his diſcretion, may (as it ſeemeth) binde to the good behauiour, him that is charged (or ſuſpected) to haue gotten a Baſtard childe, to the end that hee may be forth-comming, when the childe ſhall be borne; otherwiſe there will be no *Putatiue* father, when the two Iuſtices (after the birth of the childe) ſhall come to take order according to the Statute of 18. *Eliz. ca.* 3. The like may be done after the birth of the child, and before ſuch order taken.

Two Iuſtices. Two Iuſtices of Peace (one being of the *Quorum*) in or next 18.Eliz.cap.3. P.1. to the limits where the Pariſh Church is, in which pariſh any Baſtard childe (begotton and borne out of lawful Matrimony) ſhal be borne, vpon examination of the cauſe and circumſtances, ſhal and may take order (by their diſcretion) as well for the reliefe of the pariſh, and keeping of the childe, (by charging the mother or reputed father, with the payment of money, or other reliefe,) As alſo for the puniſhment of the mother and reputed father.

But ſuch a Baſtard childe muſt bee one that is left to the charge of the Pariſh, or one likely to be (or which may be) chargeable to the Pariſh. See this Stat. of 18. *Eliz.* and the Stat. 7. *Iacobi cap.* 4.

If the two Iuſtices cannot agree vpon their order (See the title,

title, Iuſt.of P.) it ſeemeth the mother may be examined vpon Oath, concerning the reputed father, and of the time, and other circumſtances.

Vide tit. Heare & determine.

By the Stat.7.*Iac.* it appeareth that the Iuſtices of Peace ſhall now commit ſuch lewd women to the houſe of correction, there to be puniſhed, &c. And therefore *quære* if the Iuſtices of Peace may puniſh (by corporall puniſhment) the mother by force of this ſtatute of 18.*Eliz.*3. and then to ſend them to the houſe of correction: for the rule of Law is, *Nemo debet bis puniri pro vno delicto*; and the Diuine ſaith, *Deus non agit bis in idipſum*, *Co.*4.43. & 8. 118. 7.Iac.4.

After ſuch order by two ſuch Iuſtices, ſubſcribed vnder their hands, if the ſaid mother, or reputed father, vpon notice thereof ſhall not performe the ſaid order, Then ſuch perſon ſo making default, ſhalbe (by the ſame two Iuſtices) committed to the Gaole, there to remaine without baile or mainpriſe, except ſuch partie ſhall put in ſufficient ſuerties to performe the ſame order, or elſe to appeare at the next generall ſeſſions of the peace, in that Countie, and to abide ſuch order as the Iuſt. of Peace there ſhall take in that behalfe. 18.Eliz.3. P.1.

Euery lewd woman which ſhall haue a Baſtard, which may be chargeable to the pariſh, the Iuſtices of Peace ſhall commit ſuch woman vnto the houſe of correction, there to be puniſhed & ſet on worke for one yeare: And if ſhe ſhall eftſoones offend again, then to be committed to the houſe of correction, as aforeſaid, & there to remaine vntill ſhe can put in good ſuerties for her good behauiour, not to offend ſo againe. 7.Iac.4.

Now it ſeemeth that ſuch commitment to the houſe of correction ought to be by two Iuſtices at the leaſt (by the words of this ſtatute) And then by the conference of theſe two ſtatutes (of 18.*Eliz.* and 7.*Iac.*) it ſeemeth fitteſt for the two next Iuſtices authoriſed by 18.*Eliz.*

It ſeemeth alſo (by the words of this ſtatute 7.*Iacobi*) that ſuch a woman ſhall not be ſent to the houſe of correction, vntill after the childe be borne, and that it be liuing; for it muſt be ſuch a child as may be chargeable to the pariſh.

Alſo it ſeemeth that ſuch a Baſtard childe, is not to be ſent with the mother to the houſe of correction, but rather that the childe ſhould remaine in the towne where it was borne (or ſetled with the mother) and there to be relieued by the worke of the mother, or by reliefe from the * reputed father: See to this purpoſe the Reſolution of the Iudges, *Reſol.*6. See the title, Rogues: And yet the common opinion and practiſe is otherwiſe, *ſc.* to ſend the child, with the mother, to the houſe of correction. * 18.Eliz.3.

Baylement.

Baylement.

Lambt.15. BY the Common Law, the Sheriffe and euerie Conſtable, (being conſeruators of the Peace) might haue bayled a ſuſpect of felony; but this authority ſeemeth to be taken from them, and giuen to Iuſtices of Peace, by theſe Statutes following.

Firſt, by the Statute 1.*R.*3.*cap.*3. euery Iuſtice of Peace had authority (by his diſcretion) to let to bayle perſons impriſoned for ſuſpition of felony, &c.

But for as much as after the making of that Statute, diuers not being bayleable, were notwithſtanding let to bayle, and ſo many notable felons eſcaped, therfore this Statute was repealed by the
3.H.7.cap.3. Statute of 3.*H.*7.

And thereby any two Iuſtices of Peace (the one being of the *Quorum*) were enabled to let any priſoners (mainpernable by the Law) to bayle, to the next generall Seſſions (of the Peace) or Gaole deliuery, as the caſe ſhould require. After, for that one Iuſtice of Peace in the name of himſelfe, and of one other of his fellow Iuſtices (not making the other Iuſtice priuy vnto the cauſe wherefore the priſoner ſhould be bayled) did oftentimes by ſiniſter meanes ſet at large great and notable offendors, ſuch as were not bayleable; and yet to hide their affection therein, did ſignifie the cauſe of their apprehenſion, to be but onely for ſuſpition of felony, (whereby the ſaid offendors haue eſcaped vnpuniſhed;) for reformation whereof, by the Statute 1.*et* 2.*P.et M.* it was ena-
1.& 2.P.& M. cap.13. cted, That if it be for manſlaughter, or felony, or ſuſpition of manſlaughter or felony, then the ſame Iuſtices muſt be preſent together, at the time of the ſaid baylement, & that they muſt certifie (in writing ſubſcribed with their owne hands) the ſaid bailement at the next generall Gaole deliuery, to be holden within the County where the perſon ſhall be arrected or ſuſpected, (vpon paine to be fined by the Iuſtices of Gaole deliuery.)

Two Iuſtices.

Now by the preamble of both laſt recited Statutes, the miſchiefe ſeemeth to be the eſcape of felons; and therefore if it be not in caſe of felony, it ſeemeth any one Iuſtice of Peace alone, may bayle a priſoner. (See the titles, Affray, Counterfeiters, and Suertie for the Peace:) except where ſome particular Stat. ſhall otherwiſe preſcribe, as in *titulo* Counterfeitors. See more of bailement *titulo* Baylement & Maineprise: as alſo *titulo* Baylement.

One Iuſtice.

Bridges.

FOure Iuſtices of Peace (whereof one to be of the *Quorum*) where a decayed Bridge is, and that it cannot be proued who, nor

nor what lands be chargeable to the repairing therof, may tax the inhabitãts of the whole shire, citie or town corporat, & may make collectors, & appoint ouerseers, for the amẽdmẽt of the same, &c. 22.H.8.5. P.23,24.

But otherwise no Village or Freemen shall be compelled to make any Bridge, but such as by right they had wont to make; and that they and their auncestors haue vsed time out of mind, to make the same, or that they hold certain lands to make the same. For though a man of his owne accord, hath made or amended a Bridge, yet shall he not be thereto constrained at another time: And yet if a man and his auncestors, or a corporation &c. haue time out of mind vsed to doe such things, although they did it of their owne free minde and accord, and not of right, yet such continuance shall conclude them and their heires, or successors. And so of High-wayes. 21. *Ed.* 4. 46. Mag. Charẽ. 15 P. tit. Weares 1. F. Grants 94. 44 E. 3. 37. 21. E. 4. 46.

If part of any such Bridge be in one County, Riding, Citie, or town corporate, & part in another, euery of them shalbe charged to repaire such part as shall lye within their limits, &c. 22. H. 8. 5. P. Bridges. 2.

If it lye wholly in a Corporation, the Hundred shall not be charged therewith; *& e conuerso.*

By cõmon right Bridges shalbe amended by the whole county, for that it is for their cõmon good & ease; and yet if any haue fishings, or other profit in that Riuer, they in reason & * law (as it seemeth) are chargeable: and therefore the Iust. of P. in good discretion may taxe such proportionably to their profit. Cromp. 186. b. & 187. b. * 37. Ass. pl. 16. per Greene.

Where men are charged by their tenure or lands, euery owner or occupier of such lands as are to be charged proportionably to their said lands. See the title, *Sewers*.

Such as are chargeable to repaire such Bridge, may enter vpon any other mans land or soile adioyning, & may lay their stone, lyme, timber, or other things necessary for the repayring, and amending thereof; and the owner of the lands shall haue no Action therefore, for it is for the common profit, &c. 43. *Ass.* 7. Co. 11. 52.

If a man maketh a Bridge for easement to his Mill, and that decayeth, the party, nor any other shall be charged to repayre this, for it is no common passage. Cromp. 187.

Cloth.

One Iustice. IEvery Iustice of P. may enter and make search for any teynters, wrinches or other engines whatsoeuer, whereby any deceipt may be vsed in or about the stretching of any wollen Cloth; & may vtterly deface the same teynters, &c. and for the second offence may sell them away. 39. El. 20. 43. El. 10. P. Drapery, 118, 127.

And

And if vpon information made to any Iuſt. of P. of any ſuch Teynters,&c.he ſhall not make ſearch and execute this law within vij.dayes,he ſhall forfeit for euery ſuch default, v. li.

P.Drapery, 115,127. Alſo one Iuſtice of Peace of the Shire, next adioyning to any Citie,Borough,or towne corporate within England, may ioyne with them of ſuch Citie,Borough,or town corporate, in appointing the yearely Ouerſeers for ſuch clothes,&c. *ibidem*.

3.E.6.2. 39.Eliz.20. 43.El.10. P.Drapery,45, 115,118. Any two Iuſtices of Peace, within their Limits, may once euery yeare appoint Ouerſeers for that whole yeare following,or for a ſhorter time,at their diſcretions,of any woollen cloth,to be made or ſold,in any towne,not being corporate,and may charge them vpon their oathes, and binde them in Recogniſance of fortie pound a peece,to do their beſt endeuours by all lawfull wayes and meanes, for their time, to ſee the ſtatute of 39. *Eliz. cap.*20. in all points truly obſerued,&c. The particulars ſeem to be theſe: *Two Iuſtices.*

1 That the weights,lengths,and breadths of all wollen clothes,be according to the Statutes.

2 That euery ſuch cloth haue a ſeale of Lead, conteyning the iuſt length and weight.

3 That ſuch cloth be not ſtretched or ſtrained.

4 Whether there be any Teynters, Wrinches, or other ſuch engines,for the ſtretching of cloth.

If any perſon commuanded by two Iuſt.of P.to appeare to be made an Ouerſeer according to this ſtatute do (without reaſonable excuſe) refuſe to come,& to take vpon him that office,he ſhal forfeit for euery ſuch refuſall 40.s. the one halfe to the King,and the other halfe to thoſe two Iuſtices; and ſhall remaine in ward to the Sheriffe, vntill he hath paid the ſame forfeiture, or put in ſuerties for the ſame. *P. Drapery* 47.

P. Drapy 118. The money that ſhall be made,vpon the ſale of any Teynters, Wrinches,& other ſuch engines,ſhalbe diſpoſed(to the poore of the pariſh,where the ſaid teynters &c.ſhalbe found) by the conſent of any two Iuſt.of P.within the ſame County.

7.Iac. 16. But by the ſtatute 7.*Iacobi*, certaine clothes made within the counties of Cumberland, Weſtmerland,and Lancaſter,ſhal not be ſubiect to ſearch,&c.

5.Ed.6.6. P.Iuſt.83. If any perſon (which ſhall retaile any of the Clothes, Kerſies, Frizes,Rugges, or Cottons, of the ſeuerall makings(ſpecified in the ſtatute 5.*Ed.6.c.6.*) doe preſent any ſuch wollen cloth which is defectiue or faulty,vnto two Iuſt.of P.next adioyning (out of a citie,borough,or town corporat) where ſuch cloth ſhalbe found faulty; the ſame Iuſtices ſhall cauſe the ſame cloth to be cut into three equall peeces, whereof the King ſhall haue one, the preſenter another,& the third the ſaid Iuſtices ſhal reteine to themſelues.

Any

Any two Iustices of Peace may take order betweene the Clothier and his Spinsters, Carders, Kembers, Sorters, and Weauers, which shall imbesill, sell, or deteine any part of their Wooll or Yarne: and that as well euery such Spinster, &c. so offending, as also the buyers and receiuers (knowing the same to be embeselled) being thereof conuicted, by the confession of the partie, or by one sufficient witnesse vpon oath, before two such Iustices, shall giue such recompence to the party grieued, as by the said Iustices shall be ordered: and if such offendor shall not be thought (in the discretion of the said Iust.) able, or doe not make recompence according to such order, then such offendor is to be whipped, or set in the Stockes (in or neere the place where the offence was committed) at the discretion of the said Iustices. And such two Iustices haue full power to minister the oath to such witnesses, and finally to heare, end, and determine the said offences. 7. Iac. 7.

Clothiers and other Masters, that shall refuse to pay such wages (to their Spinsters, Weauers or other workemen whatsoeuer) as shall be assessed, at the sessions, by the Iustices of Peace, and shall be thereof conuicted before any two Iustices of the Peace, (the one being of the *Quorum*) vpon their owne confession, or vpon proofe by two sufficient witnesses, shall forfeit for euery such offence, x.s. to the party grieued, the same to be leuied by distresse and sale of the offendors goods, by warrant from the same Iustices. 1. Iac. 6. P. Iust. 66.

Linnen cloth. Two Iustices of the Peace (one being of the *Quorum*) may take the information of stretching, or other deceitfull vsing of Linnen cloth (by him that hath seised it) and of his seiser therof, and may binde the said seiser to giue in euidence, and to pursue the same matter with effect (at the next sessions, &c.) and also to pay the moitie of all that he shall recouer, to the vse of the Kings Maiestie, &c. 1. Eliz. 12. Rastal. 249. b.

Corne.

THe certificat of one Iustice of Peace (ioyned with the Customer of the place) of the vnlading and selling of Corne, or cattell, carried by water from one place to another of this Realme, vnto the Customer and Controller of the place where the same was embarked, is sufficient vpon the statute of forestalling. See more of Corne *titulo Transportation.* 5. E. 6. 14. 13. Eliz. 25. P. Forestal. 6.

Constables.

EVery Iustice of Peace may cause two Constables to be chosen in each Hundred, *Lambert* 190. And this seemeth to be meant

meant of the high Conſtables of Hundreds, and to include and implie of congruence the ſwearing of them, and ſeemeth to be by vertue and force of the Statute of Wincheſter made 13. *Ed.* 1. and of the Commiſſion, the firſt *Aſſignauimus*, or clauſe.

Note that theſe Conſtables of hundreds were firſt ordained by the ſaid ſtatute of Wincheſter *tempore Ed.* 1. And they were to preſent, before Iuſtices aſſigned, defaults of armor, of watches, of highwaies, and of Huy and Cry; and alſo ſuch as lodged ſtrangers for whom they would not aunſwere. See *Raſtal* 379. c. d.

Petie Conſtables (in townes and pariſhes) were after deuiſed (for the aide of the Conſtables of the Hundred) *vidz.* about the beginning of the raigne of King *Ed.* 3. as appeareth by maiſter *Lambert* in his booke of the Dueties of Conſtables, *pag.* 9.

The chuſing and ſwearing of theſe petie Conſtables, is reputed properly to belonge to the Court Leete: yet we finde it vſual and warranted by common experience, that euery Iuſtice of P. doth alſo ſweare them. See the title *Warrants*. *One Iuſtice.*

Co. 8. 41. And here for the better chuſing of theſe Conſtables, you ſhall vnderſtand, that the law requireth that euery Conſtable be *Idoneus homo*, that is, apt and fit for the execution of the ſaid office: And he is ſaid in law to be *idoneus*, who hath theſe three things, honeſty, knowledge, and ability;

Honeſty, to execute his office truely, without malice, affection, or partiality;

Knowledge, to vnderſtand what he ought to do;

Ability, aſwell in ſubſtance or eſtate, as in body, that ſo he may intend and execute his office diligently, and not through impotency of body, or want, to neglect the place.

Co. 8. 42. And if any ſhall be choſen Conſtable, which is not thus enabled and qualified, hee may by law be diſcharged of his ſaid office, and another fit man appointed in his place.

Counterfeiters.

3 H. 8. 1. P. Iuſt. 54. TWo Iuſtices of peace, the one being of the *Quorum*, may (as it ſeemeth) binde ouer to the next generall Seſſions of the peace, any perſon that is ſuſpected of any deceitfull getting into his hands, any money, or other things of any other perſons, by color of any falſe tokens, or counterfeit letter made in any other mans name; or may impriſon ſuch offendors, or baile them vntill the next generall Seſſions. *Two Iuſt.*

Dying.

One Iuſtice. VPon information giuen to any Iuſt. of P. againſt any perſon ſuſpected to offend this ſtat. concerning the vſing of Lodwood, *alias* Blockwood, in dying, ſuch Iuſt. may by his warrant, or other commaundement, cauſe to come before him, and may examine by oath, or otherwiſe, the ſeruants, or workemen of ſuch ſuſpected offendors, and other perſons able to diſcloſe the offence: And vpon finding the ſame, the ſaid Iuſtice ſhall binde with ſureties (to the next Gaole deliuery, or quarter Seſſions, of that county) aſwell ſuch ſuſpected offendors, as the examinates, which do diſcouer the offence; And ſhall alſo certifie thither the ſaid examinations: And if ſuch ſuſpected offendor ſhall refuſe to be bound, then may ſuch Iuſt. ſend ſuch ſuſpect to the next gaole, there to remaine, till he or ſhe ſhall become ſo bound with ſureties. 39 El. 11. P. 2.

Two Iuſt. Any two Iu. of P. of the county were any Logwood ſhall bee found (in whoſe hands ſoeuer it ſhalbe) may cauſe the ſame to be burned. 29. El. 9. P. 1.

Egyptian.

One Inſtice. EVery Iuſt. of Peace (within one moneth after the arriuall) may ſeiſe all the goods of any outlandiſh perſons calling themſelues Egyptians, that ſhal come into this realme: and may alſo keepe the one moity thereof to his owne vſe, making account to the king in the Exchequer for the other moity. And euery perſon that can proue by two credible witneſſes (before the ſaid Iu. or other officer, that ſo ſeiſeth (that any of thoſe goods were craftyly or felonioufly taken from him, ſhall incontinently be reſtored thereto (before the party that ſo ſeiſed them) vpon pain of the double value thereof to be forfeited by ſuch ſeiſer to ſuch prouer. 22. H. 8. 10. Raſtal 135.

But note that after the moneth the offence is made felony by the ſtatute of 1. *et* 2. *P. et M. cap.* 4. *P.* 2. And then it ſeemeth the K. is to haue the goods wholly: And *quære* whether the ſtat. of 22. *H.* 8. be ſtill in force, or be altered by the ſaid ſtatute of 1. *et* 2. *Phil. et Mar.*

Felony.

Felonie.

EVery Iu.of P. (by force of the commiſſion,the firſt *Aſſignauimus*) may cauſe freſh ſuit,huy and cry,and ſearch to be made, by the ſherife, bailife,conſtables, and others, vpon any robbery, or theft: and alſo may cauſe the conſtables to arreſt, and may impriſon all ſuch as ſhalbe ſuſpected to bee theeues,murderers,or felons. *Lambert* 190.

Alſo, euery Iuſt.of P.may take the examination of all ſuch felons,or perſons ſuſpected of felony,as ſhall bee brought before him.See the title *Felons goods and examination.* 2.& 3.Ph.& Ma.10.

2 And muſt take information againſt him(of thoſe that bring them,)

3 And muſt put in writing ſuch examinations, and informations,or ſo much thereof as ſhalbe materiall to proue the felony, and muſt certifie them to the next generall gaole deliuery.

4 And muſt commit ſuch felons to the gaole, or baile them if they be baileable; but then there muſt be two Iuſtices together, and the one of them of the *Quorum*. 1.& 2.Ph.& M.ca.13.

5 And muſt bind ouer by recogniſance the Informers to appeare, and to giue euidence againſt the felon,at the next generall gaole deliuery(for the moſt part.)

But if it be for pety Larceny, or other ſmall felonyes,the Iuſt. of peace may bind ouer the Informers, and may certifie the examinations, and informations, to the next quarter Seſſions of the peace; And this was the aduice and direction of Syr *Dauid Williams* Knight (late one of the Iuſtices of the Kings Bench) at the Aſſiſes at Cambridge: For ſaid he,it was not meet to keep poore priſoners in the gaole for ſmall matters or felonies,from one Aſſiſes till another: And therfore he gaue order,that the Iu.of P.(at their generall Seſſions of the peace)ſhould try and deliuer offendors for ſmall felonies. Ann.Dom.

Beſides, the Iuſtices of peace of euery county, aſwell by vertue of their commiſſion,as alſo by force of the ſtatutes of 18.*Ed.* 3.2.34.*Ed.*3.1.& 17.*R.*2.10. haue authority to heare and determine all felonies,and are not reſtrained by the ſtatutes *Ph.& Ma.* but that they may proceed therein before the comming of the Iuſtices of Aſſiſe and Gaole deliuery (as it ſeemeth.) The words of the commiſſion to that purpoſe are *Aſſignauimus vos Iuſticiarios noſtros ad pacem &c. Ac etiam ad inquirend.de omnibus & omnimodis felonijs &c. Et ad omnia & ſingula felonias &c. Audiendum et terminandum,et ad delinquentes caſtigandum et puniendum.* P.Iuſt.1.18 Stamf.58 Lamb Int.385

Alſo there be diuers ſtatutes which by ſpeciall words did ordaine, that the Iuſtices of peace ſhould haue authority at their generall quarter Seſſions to enquire of, heare, and determine certaine felonies; As the ſtatutes

18.*H.*6.19. Souldiers departing without licence. P. Iuſt. 14.
1.*Ed.*4.2. Felonies preſented before Sheriffes in their Turnes, or Lawdaies. P. Sher. 13.
22.*H.*8.11. Cutting downe of Powdicke. P. Iuſt. 17.
25.*H.*8.6. Againſt Buggery. P Iuſt. 12.
8.*Eliz.*3. Tranſporting of Sheepe. P Iuſt. 15.
39.*Eliz.*4. *et* 1.*Iac.*7. Incorrigible rogues. P Iuſt. 74.
39.*Eliz.*17. Wandring Souldiers and Mariners. P. Mariners 6.
43.*Eliz.*13. Carying men forcibly out of Cumberland &c. P Robbery 1.

So as the Iuſtices of peace, at their Seſſions, may ſafely proceed to try all petty Larcenies, and ſmall Felonies, And ſuch other felonies whereto they are authoriſed by theſe laſt recited ſtatutes: And in ſuch caſes alſo, the Iuſtices of peace that ſhall take the examination of ſuch felonies, may ſafely bind ouer the Informers, and certifie the examinations and informations, to their next generall Seſſions of the peace.

And yet there be ſome felonies, which the Iuſtices of P. cannot heare or try at all: ſee which they be. *Lambert.*529. *Cromp.*56. See the title *Felonie by Statute.*

If one ſhall bring a man ſuſpected of felony before any Iuſt. of peace, but refuſeth to bee bound to giue euidence againſt the priſoner, either at the general Gaole deliuery, or quarter Seſſions, as the caſe ſhall require, If ſuch bringer hath giuen euidence before the ſaid Iuſtice againſt the priſoner, or can declare any thing materiall to proue the felony, and will not, the Iuſtice of peace (vpon his diſcretion) may commit to priſon ſuch perſon ſo refuſing, or may bind him to his good behauiour: But if the bringer of a perſon ſuſpected of felony, cannot declare any thing materiall to proue the felony, nor any other perſon then preſent: It ſeemeth the Iuſtice ought not to commit the priſoner. And ſo was the direction of Sir *Dauid Williams*, at the Aſſiſes at Cambridge aforeſaid: yet the Iuſtices ſhall do well to examine the priſoner, And if he ſhal confeſſe the felony, then to commit him: Or if vpon his examination, there ſhall appeare any iuſt cauſe of ſuſpition: Or if the priſoner bee a man of euill fame, and that there be a felony committed, in theſe caſes, the Iuſtice ſhall doe well not to let him goe, but at leaſt to bind him ouer to the next gaole deliuery, and in the meane time to take further information againſt him. See the other title *Felony.* Cromp. 102.b.

Fiſh.

Fiſh.

Weſt.2.47. 13.R.2 19. P. 5 Fiſh 1. Iuſt.41.

EVery Iuſtice of peace is a conſeruator of riuers within his county, and may appoint and ſweare vnder conſeruators, and (when he may attend it) ought to ſurueigh all the weares in the riuers, that they be of reaſonable wideneſſe.

Euery Iuſtice of peace may burne the nets, and other engines, caſt into waters, wherewith the frie of any fiſh may be taken or deſtroyed.

3.Iac.12. By warrant of any one Iuſtice of peace, the Conſtables and Churchwardens, where any offence is committed in deſtroying the ſpawne and brood of ſea Fiſh againſt this act, may leuie the forfeitures of the offendors by diſtreſſe and ſale of goods. 3.*Iac. cap.*12.

Fiſh daies.

1.Iac.29. P.7. EVery Iuſtice of peace (in the Lent time) may enter into and, ſearch all victualling houſes; And finding there any beefe, mutton, veale, or hogges killed, or dreſſed (except fleſh to be killed three daies before Eaſter) may take and ſeiſe the ſame as forfeit, And ſhall giue the ſame to priſoners, and other poore folkes, by their diſcretion.

Forcible Entrie.

VVHat is a Forcible Entrie, and what is a forcible holding, or deteyner. See the other title *Forcible Entrie.* *One Iuſtice.*

15.R.2 3. 8 H.6.9. P.2. Euery Iuſtice of peace, vpon complaint to him made, or vpon other notice to him giuen, of any Forcible Entrie into, or holding, or deteiner of poſſeſſion of any lands, tenements, or other poſſeſſions (or of any benefices or offices of the Church) contrary to theſe ſtatutes, without any examining, queſtioning, or ſtanding vpon the right or title of either party, ought in conuenient time (at the coſts of the party grieued) to do execution of theſe ſtatutes in manner and forme hereunder following.

1 Firſt he ought to goe to the place where ſuch force ſhalbe

2 He may take with him ſufficient power of the county, or Lambert 152. towne, by his diſcretion, and the ſheriſe alſo if need bee, to ayde him, for the better execution of his buſineſſe; *ſc.* aſwel for the arreſting of ſuch offendors, as alſo for the remouing of the force, and for the conueying of them to the next Gaole.

3 He ought to arreſt, and remoue all ſuch offendors, as at his comming he ſhall ſee, or find continuing the force, And may

take away their weapons, harnies, and armor, and presently cause them to be praised, and after to be answered to the king, as forfeited, or the value thereof.

If the doores be shut, and they within the house shall deny the Iustice to enter, it seemeth he may breake open the house to remoue the force.

But if such offendours being in the house, at the comming of the Iustice, shall make no resistance, nor make shew of any force, Then the Iustice cannot arrest, or remoue them, except vpon the enquiry a force be found. See *Cromp.* 73. and the other title *Forcible Entrie.*

Also if the house or land which is holden with force shall extend into two counties, and the offendours remoue their force into that part of the house or land which is in the other county, when the Iustices do come, they cannot then remoue the force. Cromp. 71.

And if the Iustice at his comming shall see or find a force, and shall remoue the offendors, yet he may not vpon this his owne view, restore the party ousted, to his possession againe, without enquiry first made of the force by a Iury (as appeareth hereafter.)

Record. 4 Also the Iustice ought to make a record of such force by him viewed, which record shall be a sufficient conuiction of the offendors; and the parties shall not be allowed to trauerse it. 14.H.7.8.

And this record (being made out of the Session by a pertilar Iustice) the said Iustice may keepe by him: or he may make it indented, and certifie the one part into the Kings Bench, or to leaue it with the Clerke of the peace, and the other part hee may keepe himselfe. Lamb. 152. 163. & 375.

The forme of the record, See the other title *Forcible Entry, and Presidents.*

Imprison. 5 Also he ought to commit (immediatly) to the next Gaole, all such persons, as he shall find and see, continuing the force at his comming to the place: The said offendors there to remaine conuict by his owne eye, testymony, and record, vntill they haue payd a fine to the King: For this sight and view of the force by the Iustice (being a Iudge of Record) maketh his record thereof (in the iudgement of the law) as strong and effectuall, as if the offendors had confessed the force before him; and (touching the restrayning of trauerse) more effectuall, then if the force had bin found by a Iury, vpon the euidence of others. 21.H.6.5. Br. Peace 4. Co. 8. 120. P. 2.

And yet the words of the statute seeme more large, *scil.* And if he do find any that made any such forcible entry, or that hold the place with force &c. hee shall commit the offendors to the gaole &c. But such force must be in the presence or view of the Iust. of peace, P. 2. Cromp. 195. b.

peace,or elſe he can neither record it, nor yet commit the offendors. 13.*H.*7.*Crooke* 41.

The forme of the *Mittimus:* See the other Title, *Forcible entry.*

Co.8.41.a. Lam.163.557. Alſo the ſame Iuſtices of peace,or ſome of them that ſhall ſee the force,(as hauing beſt knowledge of the matter, and of the quantitie of the offence, and hauing the cuſtodie of this Record) are the proper Iudges ouer this offence; And therefore may aſſeſſe the fine vpon euery ſuch offender; But the fine muſt bee impoſed vpon euery offender ſeuerally, and not vpon them ioyntly; And the Iuſtice ought to eſtreate the ſame fine, and to ſend the eſtreate into the Eſchequer, that from thence the Sheriffe may bee commaunded to leuie the ſaid fine to his Maieſties vſe. But vpon the ſame fine ſo aſſeſſed and eſtreated it ſeemeth the Iuſtice is to deliuer the offenders. *Lambert*, 554. *Fine.*

Co.11.43.a.

Lam. 162.555. Br.Imp.100. Alſo vpon paiment of the ſaid fine to the Iuſtice,or vpon ſureties found (by Recognizance) for the payment thereof, the ſaid Iuſtice may deliuer the offendors out of priſon againe at his pleaſure, by ſome opinions: But *quære*, for that the Sheriffe is accomptant for all fines. *Lamb.*555.

Cromp.161. Lam.editio. 1582. Or the Iuſtice of peace (by ſome opinions) may record ſuch force, and commit the offendors; and after certifie the record to the Iuſtices of Aſſiſe,and Gaole deliuery(as it was done at Stafford Aſſiſes, *Anno* 26.*Eliz.* by the report of Maſt. *Crompton*) Or elſe to certifie it to the generall Seſſions of the Peace,(as it ſeemeth to Maſt. *Crompton*) and there the offendors may be fined: For,ſaith he, the Statute doeth not ſay,that the fine ſhall be aſſeſſed by them that record the force, more then other Iuſtices.

Lamb.163. Or rather the Iuſtices of peace may certifie or deliuer the Record by him made,and referre the Fine and further proceedings therein, to the Kings Bench (in regard of their ſupreame authoritie in ſuch caſes.) And this Maſt. *Lambert* thinketh to be the ſafeſt courſe.

7 Alſo the Iuſt. of peace, notwithſtanding his owne view of the force,may & ought in ſome good town or place neere where the force was,to enquire by a ſufficient Iury of the ſame County, to bee returned by the Sheriffe,as well of thoſe which made ſuch forcible entry, as of thoſe which made ſuch forcible deteiner. *Enquire.*

And here note, that any one Iuſtice of peace alone out of the Seſſions,may make an enquiry(being ſo appointed by the Stat.) whereas otherwiſe there muſt be two Iuſtices at the leaſt,to make an Enquirie, or to holde a Seſſions, and one of them of the *Quorum.*

And this enq.ought to be made whither the offenders be preſent

or

or gone, at the comming of the Iuſtice of peace: Yea this inquiry the Iuſtice muſt make, though he go not to ſee the place where the force is; For without this enquiry, there can bee no reſtitution. See more concerning this Enquiry in the other Title *Forcible Entry*.

The forme of a Precept to the Sheriffe to returne a Iury. See the title, *Preſidents*.

The forme of the Enquiry, Preſentment, or Verdict. See as before.

Reſtitution. 8. And if vpon ſuch Enquiry, ſuch forcible entree, (* or forcible holding or deteiner) ſhalbe found by the oathes of the Enquirors, then the ſaid Iuſtice of peace ſhall reſeiſe the lands and tenements ſo entred vpon or holden, and thereof put the partie in poſſeſſion againe, which in ſuch ſort was put or holden out. See the other title of *Forcible entry*, contrary in caſe of a diſſeiſee. * P.R. 41.b 36 b. Alſo ſee the words of the ſtatute.

But the putting out muſt of neceſſity be found, and that by expreſſe words in the Inditement. See as before.

And this reſtitution, the Iuſtice of peace may make himſelfe: Or he may make his warrant to the Sheriffe to doe it: Or elſe he may certifie ſuch preſentment or enditement, taken before him, into the Kings Bench, and ſo leaue the reſtitution to be awarded out of that Court. See as before.

But the Iuſtices of Aſſiſe and Gaole deliuery, nor the Iuſtices of peace at their generall Seſſions, cannot (as it ſeemeth) make or award Reſtitution, except the Inditement were found before them; but the Iuſtices of peace onely, or ſome of them, that were preſent at the Enquiry, and when the Inditement was found (they onely) haue power to make reſtitution; Except notwithſtanding the Iuſtices of the Kings Bench, who haue a ſupreame authority in all caſes of the Crowne. Co. 9. 118.

And therfore if the record, *ſc.* the preſentment of ſuch force, ſhalbe certified by the Iuſtices of peace into the Kings Bench; Or that the ſame preſentment or enditement, ſhall be remooued thither by *Certiorari*, there the Iuſt. of the Kings Bench may award a writ of Reſtitution to the Sheriffe of the ſame County to reſtore poſſeſſion to the partie ſo expelled.

After it be found by ſuch Enquiry, that ſuch Forcible entry or deteiner, is made, the Iuſtice of peace may breake open the houſe by force, to reſeiſe the ſame, and to put the party ſo put out, in poſſeſſion againe. And ſo may the Sheriffe doe, hauing the Iuſtices Warrant. P.R. 41.b

The forme of ſuch Warrant from the Iuſtice of Peace to the Sheriffe, to make reſtitution: ſee in the other title of *Forcible entrie, and Preſidents*.

But

But the Iuſt. of Peace may not (in any caſe) make reſtitution, without ſuch enquiry firſt had, and ſuch force therby found: For if the Iuſt. ſhal make reſtitution without enquiry, it ſeemethto be puniſhable in the Starre-chamber.

Alſo this Reſtitution ought to bee made to none but to him onely that was put out; So that if the father be put out by force, and dyeth (after enquiry, and before Reſtitution) his heire ſhall not haue reſtitution.

To whom Reſtitution ſhall bee made. See the other Title, *Forcible Entry.*

Alſo ſuch Reſtitution muſt bee made, onely where a man is put out or holden out &c. of houſe, or land, and is not to be vnderſtood of a Rent, Common, Aduowſon, or ſuch like. See the other Title, *Forcible entry.*

Alſo the Iuſtice may make Reſtitution, notwithſtanding any offer of Trauerſe; But yet vpon Trauerſe tendred, the ſafeſt way (for the Iuſtice of Peace) ſeemeth to be, for him to deliuer, or certifie the Preſentment into the Kings Bench, and ſo to referre the further proceedings therein to them. See the other Title, *Forcible Entry.*

And although theſe ſtatutes doe inflict no penaltie vpon the Iuſtices of peace, if they ſhall not execute theſe ſtatutes, yet if vpon complaint, or other notice to them giuen of ſuch force, they ſhal not at leaſt remoue the force, record it, and commit the offendors, they are puniſhable in the Starre-chamber.

Although the Iuſtices of peace ought to commit to the Gaole, and may fine all ſuch as he ſhall ſee continuing their force at his comming to the place; yet vpon force found by the Inquiry only, and not viewed and ſeene by the Iuſtice (although this Preſentment of the Iury be a conuiction of the offendors) it ſeemeth the Iuſtice of peace may neither Fine, nor ſend to the Gaole the ſaid offendors, (By the ſtatute of 8. *H.6.* which appointeth the inquiry) for the Iuſtice hath power by the ſaid ſtatute to make Reſtitution onely, as ſaith M. *Lambert*, 162. yet M. *Crompton* holdeth the contrary. Cromp. 161. b 162. a. contr.

But howſoeuer the Iuſtice of peace is to remoue the offendors that be preſent, that ſo he may reſtore the other, and may binde the offendors to their good Behauiour; And if the offendors bee gone, yet the Iuſt. may make his Warrant to take the offendors, and may after ſend them to the gaole, vntill they haue found ſureties for their good Behauiour.

Note, that if ſuch Forcible entree, or deteiner ſhalbe made by three perſons, or moe, Then is it alſo a Riot; And then (if there be no former enquiry thereof made) it ſeemeth the two next Iuſtices

ces of peace (vpon notice thereof) ought to enquire therof as of a riot by a Iury, within one moneth, vpon pain to either of them making default to forfeit 100. li. Cromp. 68. b.

Defaults of Sheriffs. Also one Iustice of peace may (as it seemeth) heare and determine the defaults of Sheriffes and Bayliffes, in not returning sufficient Iurours (whereof euery one shal haue lands &c. to the value of forty shillings by the yeare at the least) before him to enquire of such forcible entry or deteiner: And the said Iustice of peace may proceed therein as well by Bill, at the suit of the party grieued for himselfe, as also by Enditement onely for the King: And the same Proces shalbe made against such persons endited, or sued by bill in this behalfe, as should bee made against persons endited, or sued by writ of trespasse with force and armes against the K. peace: what the Proces in such case is, *vide tit. Proces.* 8. H. 6. 9. P. Iust. 89. Rastal. 174. c.

And though any one Iust. of peace may proceed in euery of these former cases of Forcible entry, or detainer, as aforesaid, yet if two or moe Iustices shal ioyne therein together, it is the better; for, *plus vident oculi, quam oculus; & securius expediuntur negotia commissa pluribus. Co. 4. 46.*

Corporate townes. Also the Maiors, Iustices and Iustice of peace, and the Sheriffes and Bailiffes of Cities and Burroughs hauing franchise, shal haue in the said cities, townes, and burroughs, like authority to enquire of such Entries, or putting out, and in other articles aforesaid, rising within the same, as the Iust. of peace and Sheriffes in Counties and Shires haue. 8. H. 6. 9. Rast. 174. d.

The Stat. of Northampt. Also euery Iustice of peace to whom a writ vpon the Statute of Northampton (concerning the remouing of a force) shalbe deliuered, ought to execute the same writ, *sc.* he ought to remoue the force, and to certifie his doings therein in the Chancery. 2. Ed. 3.

And for that the Iustices of peace, to whom this writ shalbe deliuered, is heerein but a minister, and is to certifie that which hee shall doe therein, I will here set downe the manner how hee shall proceed to execute this writ.

First, when the Iust. of peace shall come to the place where the force is supposed by this writ, he may cause three *Oyes* for silence, to be made; And then hee may make proclamation in the Kings name to this effect: Lambert. 173.

The Kings Maiesties Iust. of peace straightly chargeth, and in his Maiesties name commandeth all and euery person to keepe silence, whilest his Maiesties writ &c. bee read, and proclamation bee thereupon made accordingly.

2 Then may he reade, or cause to be read, the writ, or may declare the effect thereof.

3. Then let three other *Oyes* bee made; And thereupon make

make Proclamation againe, as followeth:

His Maieſties ſaid Iuſtice, doeth in his highneſſe name, and by vertue of his Maieſties Writ, ſtraightly charge and command, that no maner of perſon, of what eſtate, degree, or condition ſoeuer, now being within the houſe of B. *&c. named in the ſaid Writ, ſhall goe armed, nor keepe force of armour or weapon, nor doe any thing there, or elſe where, in diſturbance of his Ma. peace, or in offence of the Stat. made at Northampton, in the 2. yeare of K.* Edward 3. *vpon paine of loſing his ſaid armor and weapons, and of impriſoning his body at his Maieſties pleaſure.*

God ſaue the King.

4. Then the Iuſtice of peace may enter, and ſearch whither there be any force of armor or weapon worne or borne, againſt this proclamation: (Or otherwiſe he may enquire thereof by a Iury, for ſo the writ it ſelfe doeth warrant him:) And if after Proclamation any ſuch be found, he ought to impriſon the offenders and to ſeiſe to the Kings vſe, and preiſe (by the oathes of ſome preſent) the armor and weapons ſo found with them, and the offendors ſo impriſoned, are to remaine in priſon vntill that ſome other commandement be giuen concerning them from his Maieſty. See the writ, *Fitz.* 249. and the title, *Bailement.*

But if vpon the proclamation made, they do depart in peaceable maner, then hath the Iuſtice no warrant by the writ, to commit them to priſon, nor to take away their armour.

Cromp. 74. 162. But when the Iuſtice hath remoued the force (vpon this writ) hee may not put the party that was put out, in poſſeſſion againe; if hee doe, it ſeemeth both the Iuſtice, and the party alſo, are puniſhable in the Starre-chamber: For the Writ doeth authorize the Iuſtice, onely to remooue the force, and not to make Reſtitution.

The forme of this writ vpon the ſtatute of Northampton, you may ſee in *Fitzh. Nbr.* 249.

The forme of Certificat, or Returne, into the Chancery, of this Writ. See in the other Title, *Forcible Entry.*

2. Ed. 3. 3. P. Armor. 1. Alſo euery Iuſtice of Peace, (*ex Officio*, and without any Writ) may doe execution of this Statute of Northampton, and that as well by force of the Commiſſion, and alſo of the ſaid ſtatute. *Without writ*

Lamb. 176. The maner to execute this ſtatute, by the Iuſtice of peace (*ex officio*) ſeemeth to bee all one, as before, where hee hath a Writ deliuered him; ſauing that when hee doeth this *ex officio*, and without Writ, hee needeth not to make any Proclamation; nor to ſende any Certificate into the Chauncery: But the Iuſtice may goe to the place where the force is, and (if it bee in an houſe

houſe) he may enter, and ſearch, if any force of armour or weapon, be worne or borne againſt this Statute; And if any ſuch offendors be found, he may commit them to priſon; and may ſeiſe and preiſe the Armour and Weapon ſo found with them; And hee ought to record all that which hee ſhall doe in this behalfe, and thereout to ſend ſome eſtreate into the Eſchequer, that the King may bee anſwered of the Armour, or of the value thereof.

But here againe the Iuſtice muſt not make any reſtitution of the poſſeſſion to the party ouſted, but muſt onely remooue the force.

And concerning the offendors ſo found and committed by the ſaid Iuſtice of Peace, it ſeemeth the Iuſtice (at his diſcretion) may fine them, and vpon payment therof, or vpon ſureties found for the ſame, that the ſaid Iuſtice may deliuer the offendors euen as in the former Statutes of 15. *R.* 2. and 8. *H.* 6. Or elſe the ſaid Iuſtice may record ſuch force, and commit the offendors, and after certifie the Record into the Kings Bench, or to the Iuſtices of Gaole deliuery, or to the generall Seſſions of the peace, as here in this title a little before. *Vide titulo, Bailement.*

Cromp. 160. Lambert 176. 556.

Games vnlawfull.

EVery Iuſtice of peace may as well within Liberties, as without, enter into any common houſe or place, where any playing at Dice, Tables, Cardes, Bowles, Coytes, Cailes, Tennis, caſting the ſtone, * football, or other vnlawfull game, now inuented, or hereafter to bee inuented, ſhalbe ſuſpected to bee vſed; And may arreſt the keepers of ſuch places and impriſon them, till they finde ſureties by Recognizance no longer to occupy any ſuch houſe, play, game, allye, or place.

33. H. 8. 9. P. Iuſt. 64. Playes. 5.

* 12. R. 2. c. 6. Lambert 195.

Alſo he may arreſt and impriſon the players there, till they be bound by themſelues, or with ſureties, no more to play at, or haunt to any of the ſaid places, or games. *Ibid.*

Euery Iuſtice of P. finding or knowing any perſon (not excepted by this ſtatute) to vſe any of the aforenamed vnlawful games (contrary to this ſtat. of 33. *H.* 8. *ca.* 9.) may commit him to ward, there to remaine without bayle, vntill he become bound that hee ſhall not from thenceforth vſe ſuch vnlawfull Games. *Ibid.*

But enquire what Games ſhall be ſaid to bee vnlawfull, other then thoſe before named. *Quære* of dauncings of the Morriſſe, or other open dauncings, Beare-baytings, common playes, and

and Fencings: all theſe ſeeme to be prohibited by the Statute, 39. *Eliz.* 4.

Dyer 254. Co. 11. 87. Note alſo, that playing at Cardes, Dice, and the like are not prohibited by the Common Lawes of this Realme (except that one be deceiued by falſe Dice, or falſe Cards, and then he that is deceiued may haue his Action of the caſe for ſuch deceipt:) neither are they *malum in ſe*, or of their owne natures: for then none might be tolerated or licenſed to vſe them; whereas the ſtatute doth except and tolerate certaine perſons, places, and times. And yet good Diuines doe holde diuers of theſe Recreations to be altogether vnlawfull, as being actions wherein (as they ſay) we neither bleſſe God, nor looke to receiue a bleſſing from God; Nay ſuch as we dare not pray to God for a bleſſing on them, nor on our ſelues in the vſe thereof.

Gunnes.

33. H. 8. 6. P. 1, 2, 6. * Co. 5. 72. WHoſoeuer ſhall ſhoote in, carry, keepe, vſe, or haue in his houſe, or elſwhere, any Gunnes, Croſſe-bows, (* Daggs, Piſtols, or Stone-bows) contrary to the ſtat. of 33 *H.* 8. 6. Euery perſon knowing this may arreſt or attach the offendors, & bring or conuey them to the next Iuſt. of P. in the ſame County (where they were found offending) which Iuſtice vpon due examination and proofe, may commit the offendors to the Gaole, there to remaine vntill they haue payed the penalty of the ſtatute. *One Iuſtice.*

The effect and particulars of which ſtatute, be as followeth:

P. 1. Co. 5. 72. 1 No perſon may ſhoot in, or keepe, any Gunne, Dagge, Piſtoll, Croſſe-bow or Stone-bow, except he hath *per annum* 100. li. in lands, tenements, fees, annuities, or offices.

P. 2. * Co. 5. 72. 2 No perſon may ſhoote in, carry, keepe, vſe, or haue any Gunne (* Dagge, or Piſtoll) that ſhall be vnder three quarters of a yard in length.

P. 2. Euery perſon hauing in land, &c. 100. li. *per annum*, may ſeiſe and take from the offendor;

Euery Gunne, (Dagge, and Piſtoll) ſhorter then is before limitted:

And euery Croſſe-bow (or Stone-bow) from him that hath not 100. li. *per annum*: and may keepe ſuch Bow, but muſt breake ſuch Gunnes, &c.

P. 3. Lambt. 462. 3 No perſon may carry in his iourney, any Gunne (Dagge, or Piſtoll) charged, or Bow bent (but onely in time and ſeruice of warre, or in going to or from Muſters) except he hath *per annū* 100. li. in lands, &c.

P. 4. 4 No perſon may ſhoot in any Gunne, &c. neere to a market

 towne;

towne, except for the defence of his perſon, or houſe; or at a Butt or banke of earth, and in a place conuenient. P.4.

5 The Maſter may not commaund his ſeruant to ſhoot, except at Butt or banke of earth, or in time of warre. P.5.

Except notwithſtanding out of this Statute, ſhooting at Butt or Banke of earth, by Seruingmen (whoſe Maſters are enabled by Statute,) and by inhabitants of Market townes; except alſo perſons dwelling alone, or neere the Sea, and makers and ſellers of Gunnes, &c. theſe may keepe Gunnes, &c. in their houſes; and perſons hauing lawfull Placards, they may ſhoote according to ſuch Placard or Licence. See other exceptions there. P.7,8,9.

But for as much as in theſe former Caſes the Iuſtice of Peace hath the whole matter committed to himſelfe, and that ſuch offendors remaine conuict vpon his examination, and proofe of witneſſe made before him: therfore he ought to be circumſpect in his examination, as alſo in his *Mittimus*; and further, to make a Record of the matter (in writing vnder his hand) and alſo to ſend the Eſtreate of it into the Eſchequer, whereby the Kings dutie may be leuied. Lambt.2,10.

The forme of ſuch *Mittimus*. *Vide tit. Preſidents.*

The forme of the Record, ſee there alſo.

All perſons which ſhoot in Gunnes (whether they be authoriſed to ſhoote, or otherwiſe) ought to preſent their names to the next Iuſtice of Peace, and ſuch Iuſtice ſhall cauſe the Clerke of the Peace to record or regiſter their names: but *quære* if this be now in vſe. *Lambt.296.* 2.E.6.14. P.11.

Two Iuſtices. Any two Iuſtices of Peace may commit to the Gaole for three moneths, &c. euery ſuch perſon as ſhall ſhoote with any Gunne, or Bow, at any Partridge, Feſant, houſe-Doue, Mallard, or ſuch fowle, or at any Hare. See more in the title, *Partridges*. 1.Iac.27. P.Feſants.6.

Hawking.

EVery Iuſtice of Peace may examine the offences, for Hawking or hunting with Spaniels in eared or codded corne, and may binde the offendors with good ſuerties to appeare at the next generall Seſſions of the Peace, to anſwer their ſaid offences. 23.*Eliz.*10. it ſeemeth requiſite alſo to binde ouer the witneſſes, which ſhall diſcouer the offence. P. { Feſants 6 / Iuſt.38.

Againſt Hawking at Feſant or Partridge between the firſt day of Iuly, and laſt of Auguſt. See 7.*Iac.*11. *Hic titulo Partridges.*

Hawkes

Hawkes that be found, ſhall be deliuered to the Sheriffe. *Vide tit. Felonies by Statute.*

Hawkes where the taking, or concealing them, is Felonie. See there alſo.

High-wayes.

One Iuſtice.

EVery Iuſtice of Peace may cauſe the High-wayes to Markets to be enlarged, and clenſed of Buſhes and trees, &c. And this he may doe by force of the Commiſſion, the firſt *Aſſignauimus (Lamb.* 190.) but how the Iuſtice ſhall compell the ſame to be done, *vide tit. Commiſſion of the Peace.*

13 E. 1. 5. P. 18. *vide.*

Euerie Iuſtice of Peace (vpon his owne knowledge) may preſent in open generall Seſſions, any High-way not ſufficiently repaired.

5 Eliz. 13. P. Iuſt. 69.

Euery Iuſtice of Peace (vpon his owne knowledge) may preſent in open generall Seſſions, any default or offence committed (within his Limits) contrary to the Statutes of *ſecundo et tertio Ph. et M.* 8. and *quinto Eliz. cap.* 13. concerning the amendment of High-wayes: and euerie ſuch Preſentment ſhall be of the force of a preſentment of twelue men (*ſc.* ſhall be a good Indictment againſt the offendors.) So that vpon ſuch preſentment, the Iuſtices at the ſaid ſeſſions may aſſeſſe the fine vpon ſuch offendors, and that in the abſence of the parties, and without calling them to it by any Proceſſe (ſauing to euerie offendor their lawfull trauerſe.) *ibidem.*

So that euerie Iuſtice of Peace may preſent, as aforeſaid, all and euerie theſe defaults following, being all contrary to the ſaid ſtatutes, &c.

2 & 3 P. & M. cap. 8. 5 Eliz. 13. 29 Eliz. 5.

P. 1.

1. IF the Conſtables and Churchwardens yearely vpon the Tueſday, or Wedneſday in Eaſter weeke, doe not call together the pariſhioners, and doe not alſo chooſe Surueyors, for the amending of Highwayes in their pariſh, leading to Market townes, according to the ſtatutes.

P. 2.

2. If ſixe dayes bee not by the Conſtables, and Churchwardens then alſo appointed for that purpoſe, and to bee before Midſummer following.

3. If notice of the ſaid dayes bee not giuen the Sunday after Eaſter openly in the Church, by the Conſtables and Churchwardens.

P. 3, 4. Raſt. 199. Lambert. 459.

4. If euery perſon hauing a Plow land in Tillage or Paſture in the ſame Pariſh, or keeping there a Plow, or a Draught, do not ſend at euery day & place appointed, &c. (for euery Draught or

plow land) one Cart furniſhed with neceſſarie tooles, and two able men with the ſame: and that they doe ſuch workes as they ſhall be appointed (by the Surueyors) by the ſpace of eight houres, euerie of the ſaid ſixe dayes: But by the Statute 18. *Eliz.* 9 he that ſhall occupie a Plow land in ſeuerall Pariſhes, ſhall be chargeable onely in the pariſh where he dwelleth; and hee that occupieth ſeuerall plow lands in ſeuerall pariſhes, ſhall be charged in each towne or pariſh where ſuch land lyeth. P. 13, 14.

5 If any of the cariages ſhall not be thought needfull by the Surueyors vpon any the ſaid dayes; if then euerie ſuch perſon ſhall not ſend two able men, for euerie Cart of theirs ſo ſpared. P. 3.

6 If euery other Houſholder, Cottager, or Labourer, (able to labour, and being no hired ſeruant by the yeare) doe not by himſelfe or one other ſufficient Laborer, worke euery of the ſaid ſixe dayes by the ſpace of eight houres, as they ſhall be appointed by the Surueyors. P. 4.

7 Note, that all perſons (being chargeable but as Cottagers) yet if they be in the Subſidie v. li. in goods, or xl. s. in lands, they ſhall find two able men to worke euery of the ſaid ſixe dayes (by the ſtat. 18. *Eliz. cap.* 9.) But it ſeemeth the Iuſt. cannot preſent ſuch default vpon his owne knowledge. P. 11.

8 If all Fences, Hedges, and Ditches next adioyning on eyther ſide any High-way, bee not from time to time, Dyked, ſcoured, repayred, and kept low, by the owners of the ground. P. 7.

9 If all trees and buſhes growing in the High-wayes be not cut downe by the owners. P. 7.

10 If any choſen to be Surueyor, ſhal refuſe the office, or will not take vpon him the execution thereof. P. 1.

11 If the Surueyors ſhall not within one moneth after any of the former offences committed, preſent euerie ſuch offence, to the next Iuſtice of Peace. P. 3.

12 Alſo if the Bayliffe, or high Conſtable (who hath receiued an Eſtreate for the leuying any forfeiture vpon theſe ſtatutes) ſhall not leuie the ſame, or ſhall not make a true accompt, and payments of all ſuch ſummes as he hath leuied, to the Conſtables and Churchwardens of euerie pariſh wherein the offence was committed, or if the Conſtables and Churchwardens haue not imployed the ſame vpon their High-wayes. It ſeemeth euery Iuſtice of Peace may (vpon their owne knowledge) preſent euery of theſe defaults, as aforeſaid. P. 10. Raſt. 199. a.

And if the Surueyors ſhall preſent any of the former offences (by P. 8.

(by them to be preſented) to the next Iuſtice of Peace, within one moneth next after the offence commited, the ſame Iuſtice ought to certifie ſuch preſentment, at the next generall Seſſions, *ſub pœna*, v.li. But if the Surueyors doe not make their Preſentment to the next Iuſtice, till after the moneth, and the Iuſtice certifieth it; this ſeemeth not good againſt the offendors.

Alſo any two Iuſtices of Peace (the one being of the *Quorum*) vpon complaint to them made by the Churchwardens of any Pariſh, may conuent before them, the Bayliffe and high Conſtables (to whom the Clerke of the Peace, or Steward of any Leete hath deliuered any Eſtreates for the collecting of the fines, forfeitures, and amerciaments for the defaults aforeſaid) and may take their accompts betweene the firſt day of March, and the laſt of Aprill, and may compell them to pay all ſuch arrerages as they ſhall adiudge, to the Conſtables and Churchwardens of the pariſh where the offence was committed; or may impriſon them vntill they haue paied ſuch arrerages. *Two Iuſtices.* P. 11

Note, that all ſuch fines or forfeitures ariſing in the Seſſions, ſhall be leuied by Eſtreats indented, made by the Clerke of the Peace, who ſhall ſeale and ſigne ſuch Eſtreats, and ſhall deliuer the one part thereof ſo ſealed and ſigned, to the Bayliffe or high Conſtable of the ſame Hundred; and the other part thereof to the Conſtables or Churchwardens of the pariſh where ſuch default was made, and to be deliuered by the Clerke of the Peace within ſixe weekes after Michaelmaſſe yearely: the which Eſtreats ſhall be a ſufficient warrant to the ſaid Bayliffe or high Conſtable, to leuy ſuch fines and forfeitures by diſtreſſe; and all ſuch fines and forfeitures ſhall be beſtowed by the Churchwardens one High-wayes in the ſame pariſh.

Alſo two ſuch Iuſtices of Peace (by the Statute 18. *Eliz.*) may take the accompt of the Surueyors of the wayes, and of the petie Conſtables and Churchwardens, for all ſuch forfeitures (within that Statute) as they haue leuied. 18. *Eliz. cap.* 10. P. 17.

Heere I thought good to moue ſome doubts that haue aroſe vpon the former Statutes; and deſire that ſome reſolution may hereafter be giuen, for better ſatisfaction, for that they be ſo ordinarily queſtioned.

What, and how much a Plow land is, Sir EDVV. COKE in his ninth part, in *Lowes* caſe telleth vs, and ſaith, That a Carue, or Hyde of land (or a Plow land) which is all one, is not of any certaine content, but ſo much as one Plow may plow in one yeare; and ſo in ſome Countrey it is more, and ſome other it is leſſe (according to the heauineſſe of their ſoile.) *A Plow land.* Co. 9. 124.

And of the ſame opinion was Iudge *Priſot* 35. *H.* 6. 29. where

he ſaith, that a Carue of land is greater in one Countrey, then in another, for that a Plow may plow more land in the yere in ſome Countrey then in another. 35.H.6.

Alſo a Carue of land (or a plow land) may conteyne houſe, meadow, paſture, and wood. Co.4.37.b.& 9.124.

1 Now a man with one Plow & fiue or ſix Horſes will occupy, plow, and dreſſe ſeauen or eight ſcore acres of arable land yearely, (as many doe with vs in the Eaſt parts of Cambridgeſhire,) and will in Sommer goe vſually with two Draughts or Carts; yet ſuch perſon is vſually charged to the amending of the High-wayes, but with one Cart furniſhed. And another man dwelling in the ſame towne, and occupyeth but forty or fifty acres, or not ſo much, and keepeth but three Horſes, and one Draught or Cart, and he likewiſe is vſually charged, as the former with one Cart furniſhed; why ſhould their two charge for cariages for the High-wayes be all alike? For mine owne opinion, I thinke it both reaſonable, and warranted by the words of the ſtatute, that he that for his owne priuate buſineſſe, ſhall vſually make and ſet vp two Draughts or Carts, ſhall alſo for the King, and Countreyes ſeruices, be chargeable with two Draughts or Carts, though he occupy all his land but with one plow.

2 Againe, what a Draught (for carriage) ſhall be, *ſc.* with how many Horſes? and whether he that keepeth but two Horſes and a Cart, as many with vs doe, be chargeable or no? I find that a Draught for the Kings carriages heretofore hath bin ſomtimes with two Horſes, as it ſeemeth by the Statute of *Magna Charta*, *cap.*21. (the words of the Statute be, No Sheriffe, &c. ſhall take the Horſes or Carts of any perſon, for cariage, except he pay for one Cart with two Horſes, x.d. by the day, and for a Cart with three Horſes, xiiij.d. by the day:) And therefore I ſhould thinke him that vſually goeth to Cart (for his own buſines) with two Horſes, to be chargeable to finde a Cart and two Horſes for the amending of the High-wayes, & to carry ſuch loads, as his two horſes are well able to draw.

3 Againe, if one occupieth a plow land, in paſture, *viz.* ſixe or eight ſcore acres or moe of paſture for feeding of cattell, but keepeth neyther Cart nor Plow, how ſhall he be charged to find a Cart or Draught that keepeth none; and yet the words of the Stat. ſeeme to charge him, *Raſtal.*199.a.

4 Againe, hee that ſhall keepe a Draught for carriage, or a Plow, though he occupieth little or no land, or paſture in his own hands, but only carteth, or ploweth for other men: whether he is not chargeable to finde a Cart, for the amending of the High-wayes? It ſeemeth he is: but *quære* whether he be chargeable to find

* P.2. finde two able men with his Cart,* except he hath in his occupation a plow land: perhaps alſo he keepeth neuer a man.

¶ There be alſo certaine particular Statutes concerning *High-wayes, as followeth*;

THe occupyer of any Iron workes, for euery three loades of Cole, or Myne, and alſo for euery tunne of yron that he ſhall cauſe to be carried in the Winter time, by the ſpace of one myle, in the High-wayes within the Wields of Suſſex, Surrey, or Kent, ſhall pay to the Iuſtice of Peace dwelling neere to the places in that County where the High-wayes ſhall be moſt annoyed, or to his aſſignes, iij.s. in money; the ſame, in default of payment, to be leuied by diſtreſſe, by ſuch Iuſtice, or his aſſignee, of the goods of the party in the ſaid County. *One Iuſtice.*

30. El. 19. P. 19.

Alſo ſuch occupier, for euery thirty loads of Cole and Myne, and for euery ten tunnes of yron carried in the ſaid High-wayes, &c. ſhal lay one load of Synder, grauell, ſtone, or chalke, in places to be appointed by ſuch Iuſtice; or elſe within eight dayes after demaund, ſhall pay iij.s. for euery ſuch load, to the hands of ſuch Iuſtice, who, vpon default of payment, ſhall leuy the ſame by diſtreſſe, &c.

P. 20.

The ſaid Iuſtice of Peace ſhall beſtow all ſuch ſummes of money vpon the amending the ſame High-wayes, at his diſcretion.

P. 22.

Two Iuſtices of Peace (whereof one to be of the *Quorum*) which were preſent at the Seſſions, wherein any perſon was conuicted for any offence againſt this Statute of 39. *Eliz.* may make warrant for leuying the forfeits therof, to any Conſtable or other officer: and they may alſo appoint ſuch wayes and meanes, as they ſhall thinke meete, to leuy the double ſummes, for not paying thoſe forfeits within twenty dayes next after lawfull demand of the ſame by ſuch officer. *Two Iuſtices.*

39 El. 19. P. 22.

By the aſſent of two Iuſtices of Peace, and twelue diſcreet men (of the Hundred, and Hundreds adioyning) any perſon may make, and lay out, in and ouer his owne land, in fee ſimple, in the Wield of Kent, a new High-way, more commodious then the old; and in ſteed thereof may reteyne the ground of the old way in ſeueralty to him and his heyres: And the ſame Iuſtices and twelue men, ſhall within three moneths certifie ſuch new way into the Chauncery. See more of High-wayes, *titulo Bridges*.

14. H. 8. cap. 6.

Horſe.

EVery Iuſtice of Peace (after ſale made in open Fayre or Market, of any ſtollen Horſe, &c.) at any time within ſixe months after

after the ſaid * ſale, may take and heare the claime, and proofe of the right owner, from whom the ſame was ſtollen (or of his executors or adminiſtrators, or other perſon by their appointment) which proofe muſt be by two ſufficient witneſſes vpon oath, to be made within forty dayes next enſuing ſuch clayme. * Lambt. 205. See the Stat. 1. El. 12. P. Fayres. 8.

Alſo the ſame Iuſtice of Peace may miniſter an oath to the party that bought the ſaid Horſe, or that hath the poſſeſſion and intereſt of the ſame Horſe, what money he payed for the ſame *bona fide*, ſo as the right owner repaying the ſame, may haue his ſaid Horſe againe, *ibidem*.

Note, that euery ſale, or other putting away of any Horſe, &c. not being according to the Statute in euery point, is voyde, (*ſc.* in euery of theſe particulars following, as it ſeemeth.) P. 5. & 7. 2. & 3. P. & M. g. 31. Eliz. 12.

1 If the Horſe be not one houre, at the leaſt, in the open place of the Fayre, where Horſes are commonly ſold.

2 If all the parties to the bargaine (being in the Fayre) ſhall not come together with the Horſe, to the Booke-keeper, to the open place appointed.

3 If the Booke-keeper ſhall not take perfect knowledge of the ſeller, or of the voucher; *ſc.* of their Chriſtian name, ſirname, myſterie, and place of dwelling.

4 If the voucher ſhall not know the ſeller indeed, or ſhall not truely declare to the Booke-keeper the Chriſtian name, ſirname, myſterie, and place of dwelling, as well of himſelfe, as of the ſeller.

5 If the Booke-keeper ſhall not make a perfect and true entry of the ſellers name, and place of dwelling, &c. and of the true price.

Note alſo, that euery contract for any ſtollen Horſe, &c. made out of open Fayre is voyd, though they be after booked.

Alſo, a ſale in a Fayre or Market ouert, ſhall not take away the owners propertie, where the buyer doth know that the propertie was to another man, or that the Horſe (or other goods) were ſtollen. See *poſtea tit. Reſtitution*. Dyer 99. Co. 3. 78, 83. 7. H. 7. 12.

Alſo to alter the property (of a ſtranger hauing right) Horſes and all other goods, are to be ſold in ſuch a place, or ſhop, as is commonly vſed for the ſelling of goods of the ſame kind. Co. 5 83.

Hue and Crie.

EVerie Iuſtice of Peace may cauſe Hue and Crie, freſh ſuit, and ſearch to be made, vpon any Murther, Robbery, Theft, or other felony committed: and this he may doe by force of the Commiſſion, the firſt *Aſſignauimus*.

Note,

13.Ed.1.12. 27.Eliz.13. P.1,9.

Note, that all Hue and Crie ought to be made from towne to towne, and from countrey to countrey, and by horſemen and foot-men; otherwiſe it is no lawfull purſuit.

Note alſo, when Hue and Crie is leuied vpon any robbery, or other felony, the officer of the towne where the felony was done, (or Hue & Crie firſt leuied) ought to ſend to euery other towne round about him, and not to the next towne onely: and in ſuch caſes it is needfull to giue notice in writing (to the purſuers) of the things ſtollen, and of the colour and markes therof; as alſo of the perſon of the felon, his apparell and horſe, &c. if it may be. See more of Hue and Crie in the title *Robberie and felonie*.

Hunting.

VPon Information giuen to any Iuſtice of Peace of any vnlawfull Hunting (of Deere or Conies) by night, or with painted faces, or other diſguiſing, (in any Foreſt, [a] Parke, or Warren) of any perſon to be ſuſpected therof; that Iuſtice may make a Warrant (to the Sheriffe, Conſtable, Bayliffe, or other officers) to take the party, and to bring him before him, or before any other Iuſtice of peace of the ſame county, who may examine him of that Hunting, and of the doers thereof: And if hee conceale that Hunting, or any offendor (with him therein) then the ſame concealement ſhall be [b] felonie in ſuch concealer. But if he confeſſe the truth of all that he ſhall be examined of and knoweth in that behalfe, then his offence of Hunting ſhall be but treſpaſſe, and finable, the fine to be aſſeſſed at the next generall Seſſions of the Peace, by the Iuſtices there. See *poſtea titulo Felonie by Statute*.

a Alſo ſee 3. Iac. cap. 13. & 7. Iac. 13. Hunting, &c. in other ſeuerall grounds is verie penall. 1. H. 7. cap. 8. P. Iuſt. 16.

b *Quere* if they kill nothing.

Alſo to diſobey ſuch a warrant, or to make *Reſcous* thereupon is felonie. *Vide vt ſupra*.

The Iuſtice of Peace that ſhall take the examination of an offendor for vnlawfull hunting in Parkes, &c. as aforeſaid, may after ſuch examination, binde the offendor to his good behauiour, (as it ſeemeth) to the end he may be forth-comming till the offence, and reſidue of the offendors be fully examined: otherwiſe if it ſhall appeare, that the offendor hath concealed any thing, whereby the offence becommeth felonie, then the offendor perhaps will not be found.

Alſo all ſuch vnlawfull hunting, if it be by three, or moe, will proue a Riot.

1. Iac. cap. 27. P. Feſants. 7.

Whoſoeuer ſhall haue or keepe any Greyhound or ſetting Dogge (not hauing ſufficient liuing according to this Statute) or ſhall trace or courſe any Hare in the ſnow, or ſhall otherwiſe deſtroy,

ſtroy, kill, or take any Hare, the ſaid offences being proued, &c. before two Iuſtices of Peace, the ſaid offendors ſhall be by them committed to the Gaole, &c. *Vide titulo Partridges.* 1. Iac. cap. 27. P. Feſants. 7.

And yet Hunting and Hawking, and ſuch other paſtimes euerie man may vſe them vpon his owne landes at his pleaſure, ſo farre as they be not reſtrained by Act of Parliament. But no man may make a Parke, or Warren within his owne ground, without the Kings graunt or licence; and therfore ſuch Parke or Warren (made without licence) ſeeme not to be within the ſtat. of *primo H. 7. 7.*

Inrolment.

ANy one Iuſtice of the Peace may ioyne with the Clerke of the Peace, in taking the Inrolment of an Indenture of bargaine and ſale of lands, &c. lying in that Countie where he is Iuſtice, and it is good. 27. H. 8. 16. P. 1.

But ſuch deed, and all other deedes to be enrolled according to this Statute, muſt bee indented *reuera*, and muſt be enrolled within ſixe moneths after the date of the ſame Indenture: and if it haue no date, then within ſixe moneths after the deliuerie of the deed; or if it be enrolled, the very day of the date of the deede, or the very laſt day of the ſixe months it is ſufficient. Co. 5. 29. b. P. 1. Co. 5. 1. b. Daliſon. 4. Eli. Dyer. 218.

Note, herein you muſt accompt eight and twenty dayes to euerie moneth, and not aboue (*ſc.* foure weekes to the moneth.)

Note alſo the difference, when a Statute accompteth by the yeare, halfe yeare, or quarter, and when by the moneth; for a yeare, halfe a yeare, or a quarter of a yeare, ſhall be accompted according to the Kalender, & by the dayes in the Kalender, and not after eight and twentie dayes to the moneth: And a yeare, or a twelue moneth (in the ſingular number) includes the whole yeare according to the Kalender. But twelue moneths (in the plurall number) or eight moneths, or ſixe * moneths, &c. ſhall be accompted after eight and twenty dayes to euery moneth: for the month by the Common Law of England, is but eight and twenty dayes; And ſo Co. 6. 62. * Except in a Quare Imp. See Co. ibidem.

Whereas { three moneths, ſixe moneths, twelue moneths. } hath but { 84 / 168 / 336 } dayes.

The { quarter of a yeare, halfe yeare, yeare. } hath { 91 / 182 / 365 } dayes.

Ter

Dyer.345. *Ter Centum, ter viginti, cum quinq; diebus,*
Sex horas, neq; plus, integer Annus habet.

And as to theſe ſix houres, the Law giueth no regard to them; and yet theſe ſixe houres euery fourth yeare doe make a day, and ſo make the Leape-yeare: and this Leape-yeare contayneth in it 366. dayes.

Note alſo for the yere, when in an Indictment or other writing or deed it ſhall be ſet downe (or the writing ſhall be dated) *Anno Dom.* 1617. it muſt be accompted according to the Computation of the Church of England, which beginneth the yeare vpon the 25. day of March, vpon which day our Sauior Chriſt Ieſus aroſe, as it is holden. Dr *Whites* Def. 151.

Labourers.

5. Eliz. cap. 4. P. 134. EVery Iuſtice of Peace vpon requeſt, may cauſe all ſuch Artificers, and other perſons as be meet to labour (by his diſcretion) to worke by the day in Hay time, and Harueſt time, for the ſauing of Corne & Hay, and may vpon the refuſall impriſon them in the ſtockes by the ſpace of two dayes and one night. *One Iuſtice.*

P. 11. Any one Iuſtice of P. may giue licence vnder his hand & ſeale, to ſuch Labourers as paſſe in Hay harueſt, & Corne harueſt, from one countrey to another to worke. *Apprentice.*

P. 14. Any one Iuſtice of Peace (vpon complaint to him made) may compell any perſon meete (in his diſcretion) to be bound as an apprentice to Husbandry or any other Art, &c. And vpon their refuſall may commit them to ward, there to remaine vntill they will be bound to ſerue according to this ſtatute.

P. 15. If any Maſter ſhall miſuſe his apprentice, or that the ſaid apprentice ſhall haue iuſt cauſe to complaine, or if the apprentice doe not his duetie to his Maſter, vpon complaint thereof made to any one Iuſtice of Peace; the ſaid Iuſtice ſhall take order betweene the ſaid Maſter and his apprentice: and for want of conformitie in the Maſter, the ſaid Iuſtice may binde him to appeare at the next Seſſions (where the Iuſtices of Peace or foure of them, whereof one to be of the *Quorum*, if they ſhall thinke meete, may diſcharge the ſaid apprentice of his apprentiſhip, and Indentures.) But if there ſhall be default in the apprentice, the ſaid Iuſtices (at their ſaid Seſſions) may cauſe due correction to be miniſtred to him, as they ſhall thinke meete. Alſo it ſeemeth, that if the

the first Iustice of Peace to whom complaint was made, shall finde the default to be in the apprentice, that then the said Iustice of Peace may send him to the house of correction, as an idle or disorderly person, by the Statute 7. *Iacobi cap.* 4. and needeth not to trouble the Sessions with him, *tamen quære*. 7.Iac.cap.4.

Any one Iustice of Peace may allow of the cause of putting away of a seruant, or of the departure of a seruant within his terme. P.5.6.

But otherwise it is of an apprentice; for an apprentice cannot be discharged but by foure Iustices of Peace at the least, and in open Sessions as aforesaid, or else by the agreement of the Master and the apprentice, and vnder his Masters hand. And yet one that is reteyned as an apprentice may be seised by his Lord as a Ward, by reason the Lords title is more auncient. P.25. Br.27.3e. Plo.259. Fitz.143.

Two Iustices. Any two Iustices of Peace vpon complaint to them made, that any seruant (who is reteyned according to the Statute *quinto Eliz.*) hath departed before the end of his terme (vnlesse it be for some sufficient cause, to be allowed by one Iustice of Peace at the least) or at the end of his terme without one quarters warning giuen before two witnesses; or that any person, compellable by the statute to serue in Husbandrie, or in any other science in the said statute named, vpon request made hath refused to serue for the wages appointed (by Proclamation in that Countie, &c. according to this Statute) or hath promised to serue accordingly, and doth not: the said Iustices may examine the matter; and if they shall find such seruant or person faulty therein, they may commit him to Ward, there to remaine without bayle vntill he shall be bound to the party offended to serue and continue with him, for the wages limitted according to this Statute, and then to be discharged without paying any fee to the Gaoler. P.6.

Any two Iustices of Peace may make a Testimoniall to a Seruing-man, that is turned away from his Master, or whose Master is dead, 14. *Eliz.* 5. *quære* if this be still in force. Lamb.526.

Euery person vnmaried, and euery other person maried being vnder the age of thirtie yeares, hauing beene brought vp in any of the Arts, Sciences, or Trades in the statute mentioned, is compellable to serue in any the said Trades, vpon request made by any person vsing the same Trade, except such persons be lawfully reteyned with some other, or haue fortie shillings in land, &c. or ten pound in goods, or some farme in tillage, wherupon to imploy themselues. 5.Eliz 4. P.2.

Euery person betweene the age of twelue yeares, and fortie, P.3.

(not

(not being lawfully reteined according to the ſtat. nor being a gentleman borne, nor a ſcholler, nor hauing meanes as aforeſaid, nor parents liuing, hauing x.li. in lands, or xl.li. in goods, and being their heire apparant) ſhal be compellable to ſerue in husbandry, by the yeare vpon requeſt, &c. See more what perſons bee compellable to ſerue, in the title, *Labourers*.

Lamb. 4. P. Iuſt. 66. Any two Iuſtices of peace may impriſon without bayle, the Maſter for tenne dayes, and the ſeruant, workeman, or labourer for one and twentie dayes, that ſhall giue or receiue exceſſiue wages, (*ſc.* any greater wages, or other commoditie, contrary to the rates or wages aſſeſſed by the Iuſtices of peace at their Eaſter generall Seſſions, and Proclamation thereof made in that Countie, &c.

5. El. 4. P. 4. Note, that euery Reteiner, promiſe, or payment of wages or other thing whatſoeuer, contrary to the true meaning of this ſtatute; And euery Writing and Bond made for that purpoſe, ſhal be vtterly void.

Ibid. Alſo any two Iuſtices of peace may impriſon (without baile for tenne dayes) the Maſter that by any meanes ſhall reteine or keepe any ſeruant, workeman, or labourer, contrary to this Statute; (*ſc.* in any the particulars following, as it ſeemeth.

P. 4. 1 Either in giuing wages contrary to the Statute, *vt ſupra*.

P. 1. 2 Or reteining or hiring a ſeruant, for leſſe time then for one whole yeare; But this ſeemeth to extend to artificers or tradeſmen, and not to huſbandry. *Quære.*

P. 7. 8. 3 Or that ſhall reteine any ſeruant, that is departed out of ſeruice, without ſhewing before his reteiner, a teſtimoniall of his lawfull departure. *quære.*

P. 12. Any two Iuſtices of peace (of the Countie where the offence heereunder mentioned ſhalbe committed) may impriſon, by the ſpace of one yeare or leſſe, by their diſcretions, any ſuch ſeruant, workeman, or labourer, as ſhall wilfully make any aſſault or affray vpon his Maſter, or vpon any other hauing the charge or ouerſight of him, or of his work, the ſaid offence being proued before the ſaid Iuſtices by confeſſion of the ſaid ſeruant, &c. or by the oath of two honeſt men.

P. 14. Any two Iuſtices of peace may compel any ſuch woman (being of the age of twelue yeares, and vnder fortie, and vnmaried, and forth of ſeruice) whom they ſhall thinke meet to ſerue, to be reteined in ſeruice, by the yeare, week, or day, for ſuch wages, and in ſuch ſort as they ſhall thinke it meet. And if ſuch woman ſhall refuſe, they may commit her to ward, vntill ſhee ſhall be bound to ſerue as is aforeſaid.

1. Iac. 6. For Clothiers which wil not pay their workmen ſuch wages as

ſhall bee aſſeſſed by the Iuſtices, at their Seſſions. See the title of *Cloth.*

The Certificate which is to be made to the head officer of any citie or towne corporate, where a childe is to bee bound apprentice, *ſc.* That the father of ſuch child may diſpend 40.s. *per annũ*, muſt be vnder the hands and ſeales of three Iuſtices of peace of the ſhire where the land lieth. 5. Eliz. 4. P. 17.

Three Iuſt.

Heere I thinke it not amiſſe to ſet downe certaine Caſes, ſome of them being by way of expoſition of this ſtatute, 5. *Eliz. cap.* 4. And other ſome at the Common Lawe, or grounded vpon former ſtatutes, yet ſuch as may giue light and helpe to our Iuſtices of peace in this buſineſſe.

Firſt, by the common law no man may be prohibited to work in any lawfull Trade, for the law abhorreth Idleneſſe, as the mother of all euill. Co. 11. 53.

A man cannot be reſtrained to vſe the Trade of making Dice, Cards, Bowles, or the like, (except it bee by Parliament) for all trades which doe auoid idleneſſe, and exerciſe men in labour, for the maintenance of them and their families, and for to increaſe their ſubſtance, and to ſerue the King when need ſhalbe, are profitable for the Common wealth; and therefore the reſtreining of them is againſt the law, &c. *Co.* 11. 86. Co. 11. 86.

Alſo by the common Law no man is prohibited to vſe diuers Myſteries or Trades at his pleaſure; And although this was prohibited by the ſtatute of 37. *Ed.* 3. *cap.* 6. yet preſently at the next Parliament (that reſtreint of free trade being found preiudiciall to the Common wealth) it was enacted againe, that all perſons ſhould be as free as they were at any time before the ſaid ſtatute, *Co.* 11. 54. Co. 11. 54.

For that without an act of Parliament no man may be reſtreined in any maner, either to worke in any lawfull trade; or to vſe diuers myſteries, or trades; therfore ordinances made to reſtreine any perſon therein, are againſt the law. Ibid.

Alſo it is lawfull for any perſon to vſe priuately any trade (as of a Cooke, Brewer, Baker, or Tailer, &c.) in his own houſe, or in the houſe of any other, for the priuate vſe of the family, although ſuch perſon were neuer apprentice to the trade. *Co. ibid.* Ibid.

Note next, that this ſtatute, 5. *Eliz. cap.* 4. extendeth not to ſeruingmen, but to ſeruants in huſbandry, and Handicrafts: And yet where the words of the Statute be, Seruant generally, there it ſeemeth to extend to all. Cromp. 185.

An apprentice muſt bee reteined by Indenture, and by the name of an apprentice expreſſely; or elſe hee is no apprentice, though he be bound. Cromp. 185. P. 15.

Who

Who are compellable to ſerue. See *P. tit. Labourers*, 2.3.14. in this title before.

Fitz.168.b. Euery Iuſtice of peace may command vagrant perſons to priſon, if they will not ſerue.

Fitz.167.c 168.i. Euery perſon who hath not ſufficient lands to occupy, or liue vpon, nor other arte, is compellable to ſerue.

Fitz.168.d.e. P.3.14. If an Infant, man or woman, of 12. yeares of age, or a Gentleman, Chaplain, Carpenter, or other perſon which is not compellable to ſerue, yet if they ſhall make a couenant to ſerue in Huſbandry, they ſhalbe bound by their couenant, and are puniſhable if then ſhall depart, &c.

Yet by the Common Law ſuch a couenant or reteiner of an Infant vnder 12. yeares of age was void, they neither hauing abilitie of bodie, nor yeares to conſent: for an Infant (by the common Law) is not of age to binde it ſelfe by couenant, *ante annos nubiles*, which is twelue yeares in a woman, and fourteene yeares in a man child. *Co.* 7.43. & 9.72. Neither before that age are they to be accounted, *potens in corpore*, which were the words

2.H.4.18 Br.19. 11.H.6.32. Br.30. vſed in the ſtatute made 23. *Ed.* 3. though thoſe wordes are now left out of the ſtat. 5. *Eliz.* And thereupon *Markham*, in 21. *H.* 6. and Maſt. *Br.* abridging that caſe, ſeeme to hold 14. yeares to bee the age for reteiner of an Infant; but there the caſe was of a man child that was reteined.

P.15.23. But now by the ſtatute 5. *Eliz. cap.* 4. any perſon aboue the age of tenne yeares, by their owne conſent and agreement, may by Indenture be bound as an apprentice to huſbandry, or any other trade or arte.

P.5.14.23. Alſo one of twelue yeares of age by the ſame ſtat. is compellable by the Iuſt. to ſerue in huſbandry: ſo alſo it ſeemeth of other trades, arts, or occupations.

Such children whoſe parents are not able to maintaine them, though they be vnder 12. yet may they be bound apprentices by the ouerſeers of the poore with the aſſent of any two Iuſtices of peace, as it ſeemeth, 43. *Eliz.* 2.

12.R.2.cap.5. P.15. If a child vſe huſbandry til the age of 12. yeres, & after be made an apprentice to any miſtery, his couenant ſhalbe void: but *quære* if this bee not repealed by the generall words of 5. *Eliz.* 4. Alſo ſee the ſtat. of *Iac. cap.* 25. *P. tit. Poore.* 5.

2.H.4.fo.13. If a woman who is a ſeruant, ſhal marry, yet ſhe muſt ſerue out her time, & her huſband cannot take her out of her Mris. ſeruice.

Fitz.168.a. A ſeruant may be compelled to ſerue in Summer in the place where he ſerued in the Winter before.

Fitz.168.h. If a man who is not able nor ſufficient to keepe a ſeruant, ſhall reteine a ſeruant, ſuch reteiner is void. *What reteiner is good.*

Reteiner of a ſeruant, without expreſſing any certaine terme, ſhalbe for one yeare: and this is now according to the ſtatute of 5. *Eliz. cap.* 4. Fitz. 169. h. P. 1.

A. reteineth a ſeruant for fortie dayes, and after B. reteineth the ſame ſeruant for one yeare: The firſt reteiner by A. is defeated and become void. Fitz. 169. f.

If a ſeruant who is reteined, ſhall depart out of ſeruice, and wander, he may be compelled to ſerue another man; but yet it is ſafe to get the conſent of his firſt maſter; For now by the ſtatute 5. *Eliz. cap.* 4. The Maſt. reteining a ſeruant that is departed out of ſeruice, without ſhewing before his Reteiner, a Teſtimoniall. ſhall forfeit fiue pound. Fitz. 168. b. P. 8.

And yet Maſt. *Fitzh.* opinion was, that if one reteineth another mans ſeruant, not knowing that he was another mans hired ſeruant, he was not puniſhable therefore, except hee ſhould deteine him after notice thereof: but now the Maſter may and muſt take notice whether he hath a teſtimoniall or no (as it ſeemeth.) Fitz. 168. b.

If one taketh an infant, or other ſeruant out of another mans ſeruice, this is puniſhable, though the infant or ſeruant was not reteined; But if an infant being retained as an apprentice or ſeruant, fall to be a Ward, the Lord may take him from his maſter, for the Lords title is more ancient. Fitz. 168. d. Fitz. 143. i. Plo. 259.

Departure of a ſeruant. If a ſeruant ſhall depart from his maſter, his maſter may take him againe, and reteine and keepe him whether he will or no. See the title, *Suretie for the peace.* Fitz. 168. p.

The maſter cannot diſcharge his ſeruant, during his terme &c. without the agreement of the ſeruant; And now by the ſtatute 5. *Eliz.* 4. it muſt bee for ſome reaſonable cauſe, to bee allowed by one Iuſtice of peace at leaſt &c. *Vide P.* 5. otherwiſe the maſter ſhall forfeit fortie ſhillings. 19. H. 6. Br. 27.

Before this ſtatute of 5. *El.* 4. the maſter might haue diſcharged his ſeruant by word: But an apprentice cannot bee diſcharged by his maſter, except it be by writing; for that an apprentice cannot be but by writing. 6. E. 4. 21. H. 6. Br. 30. 38.

If a ſeruant ſhall be put away by his maſter, yet he ſhall haue his wages for the time hee ſerued; And yet in this caſe it ſeemeth the ſeruant ſhall haue no action to recouer any part of his wages, but muſt craue the helpe of the Iuſtice of peace herein. 6. Ed. 4. Br. 38. 10. H. 6. Br. 48.

But if a ſeruant of his owne accord ſhall depart from his maſter before his time expired, he ſhall loſe all his wages. 10. Ed. 4. 49. H. 6. 19. Br. 40.

If a ſeruant ſhall refuſe to doe his ſeruice, this is a departure in Law, although he ſtay ſtill with his maſter. 3. H. 6. 37.

If the Maſter ſhall deteine from his ſeruant his wages, meat or drinke, this is a good cauſe of departure; but yet this cauſe is now Fitz. 168. l. Br. 51. P. 6.

by

by the ſtat. of 5. *Eliz.* to be allowed of by the Iuſt. of peace, before the ſeruant may lawfully or ſafely depart.

Fitz. 168. l. q. Br. 51. So if the Maſt. ſhall licence his ſeruant to depart, or if the Ma. or wife of the Maſt. ſhall beat the ſeruant, theſe were good cauſes for the ſeruant to depart, before the ſtat. 5. *Eliz.* 4. but now the allowance of the Iuſt. of peace is requiſite as aforeſaid: And yet

P. 6. note, that the Maſt. by law, is allowed, with moderation to chaſtiſe his ſeruant, or apprentice: See 33. *H.* 8. *cap.* 12. and in the title, *Suretie for the peace.*

But now that by the ſtat. of 5. *Eliz.* The cauſes of putting away and departing of ſeruants, are referred to the conſideration and allowance of the Iuſtices of peace; It behoueth them to haue good eare, leſt by their giuing too much way therein, either to the Maſter, or ſeruant, many which might (by due ordering) haue proued good ſeruants, turne rogues and vagabonds.

London.

NO new buildings ſhal be erected for habitation within three miles of Lond. nor any building ſhalbe diuided or conuerted to ſeueral habitations there, except ſuch houſes ſhall be fit for the dwelling of ſuch a perſon as heretofore hath bin aſſeſſed to

35. Eliz. 6. the Subſidy at 5. li. in goods, or 3. li. in lands at the aſſeſſement next before the ſaid building or diuiſion, or as ſhall be adiudged by the two next Iuſtices of peace (by writing vnder their handes and ſeales to be preſented at the next quarter ſeſſions) to bee fit and able to be ſo aſſeſſed in the ſubſidy. 35. *Eliz.* 6

The two next Iuſtices of peace haue power to decide and determine of the ſufficiency and conueniency of ſuch houſes, and of the ſufficiency of the inhabitants therein. *Ibidem.*

Mault.

2. Ed. 6. 10. P. 4. THe Conſtables or Bayliffe of any towne where any deceitfull Maults ſhalbe made, or mingled to be ſold, (contrary to the ſtatute 2. *Ed.* 6.) with the aduice of any one Iuſtice of P. may cauſe the ſame to be ſold to ſuch perſons, and at ſuch reaſonable prices as to the diſcretion of the ſame Iuſtice ſhall ſeeme expedient. *One Iuſtice.*

39. Eliz. 16. P. 6. The party conuicted and committed to priſon, by the Iuſtices of Peace, for not obeying the reſtraint of conuerting Barley into Mault, muſt there remaine three dayes; and after that, vntill hee ſhall become bound in Recogn. of xl. li. to the Kings vſe, before ſome one Iuſtice of peace, to performe & obey ſuch his reſtreint.

Two Iuſtices. The Iuſt. of peace at their quarter Seſſions, at all times, may ſuppreſſe and diſcharge, or reſtreine the number of Maultſters; and alſo may reſtreine ſuch perſons as they ſhal think meet from buying Barley to conuert to Mault; And if any perſon ſhall refuſe, diſobey, or not performe ſuch or any other order, which the ſaid Iuſtices ſhall ſet downe touching the ſame; Then and ſo often ſuch perſon being thereof duely conuicted before any two of the ſaid Iuſtices of peace (by his owne confeſſion, or by two witneſſes) ſhalbe by the ſaid Iuſtices committed to the common Gaole, there to remaine without baile for three dyes; and after that vntill he ſhall become bound in fortie pound, as in the former caſe. P. 6.

Mariners.

NOe Fiſherman ſhall bee taken to ſerue as a Mariner by the Kings Commiſſion, but by the choiſe of two Iuſtices of next adioyning to the place where he is taken. 5. Eliz. 5. P. 3.

See more for Mariners, *tit. Rogue, & Souldier.*

Night walkers.

EVery Iuſtice of peace (*ex officio*, and by the Commiſſion the firſt *Aſsig.*) may cauſe to bee arreſted all Night-walkers, be they ſtrangers or other perſons that be ſuſpected, or that be of euill behauiour, or of euill fame, and more particularly all ſuch ſuſpected perſons as ſhal ſleepe in the day time, and goe abroad in the nights; And all ſuch as ſhall in the night ſeaſon haunt any houſe that is ſuſpected for Bawdery; Or ſhall in the night time vſe other ſuſpitious company, or ſhall commit any other outrages or miſdemeanors; and may force them to finde ſuretie for their good Behauiour. See the title, *Suretie for the good Behauiour.* Lamb. 46. 122. 13. H. 7. 10.

For as one ſaieth, ſuch Night-walkers (or night birds) are ominous like the whiſtler &c. and ſuch nightwalkings are vnfit for honeſt men, and more ſuiting to the theefe (the right whiſtler) and to beaſts of the pray which come forth of their dens, when man goeth to his reſt. Pſal. 104.

Oath.

Oath.

Lambert 190.

ANy one Iuſt.of P.may compell ſuch as are between the age of xvj. yeres and xl. to bee ſworne to the peace.

Two Iu.of the P.(the one being of the *Quorum*) may require any perſon of the age of 18. yeares 7.Iac.6. (vnder the degree of a Baron) to take the oath of allegeance, And vpon their refuſall, may commit them to the Gaole, there to remaine without baile, till the next Aſſiſes, or quarter Seſſions.

Two Iuſt.&c.may take the oaths of the vnderſheriſs,and their officers &c.See the title *Sheriſes*.

Partridges.

23.El.10. P. { Feſants 2. Iuſt.38.

EVery Iuſtice of peace(by the ſtatute of 23.*Eliz.* may examine all offences, for the deſtroying or taking of Partridges or Feaſants in the night time, And may binde by recogniſance the offendours with good ſureties to appeare at the next generall Seſſions of the peace to anſwere their ſaid offences &c. *One Iuſtices.*

But now by the ſtatutes made 1.*Iac.*27.*et* 7.*Iac.*11. the offences of deſtroying &c. of Partridges, and Feaſants (generally) is referred to two Iuſt.of P.to examine,heare,and determine,out of Seſſions.See *hic infra*.

23.El.10. P.ibidem.

Alſo after the conuiction of any ſuch offendor (according to the ſtatutē of 23.*Eliz.*) for taking or deſtroying any Partridges or Feaſants in the night,any one Iuſtice of peace of that county may bind ſuch offendors with good ſureties, that(for the ſpace of two yeares) they ſhall not take,or deſtroy any Partridges or Feaſants contrary to that ſtatute.

1.Iac.27. P. Felonts 6.7.

1 By the ſtatute made 1 *Iac.* Euery perſon which ſhall ſhoote at,kill,or deſtroy (with any gunne or bow) any Partridge, Feaſant,Houſe-doue,Pigeon,Hearne,Mallard, Ducke, Teale, or any ſuch Fowle,or any Hare. *Two Iuſtices.*

2. Or ſhall take, kill,or deſtroy any Partridge,Feſant,Houſe-doue, or Pigeon with ſetting dogges and netts,or with any manner of nets,ſnares,engines,or inſtruments.

3. Or ſhal take,or willingly deſtroy the egges of any Feaſant, Partridge,or *S*wanne.

4 Or

4 Or ſhall trace or courſe any Hare in the ſnowe.

5 Or take or deſtroy any hare with cords, or any ſuch Inſtruments.

6 Or ſhall haue or keepe any Greyhound for Deare, or Hare, or ſetting Dogge or Net, to take Feaſants or Partridges, except they haue lands &c. of inheritance of the cleere yearely value of x.li. or xxx.li. *per annum* for life, or goods worth 200.li. or be the ſonne of a Knight, or the ſonne and heir apparant of an Eſquire: The ſaid offences being proued by the confeſſion of the party, or by the oath of two ſufficient witneſſes, before any two Iuſtices of peace (of the county where the offence ſhall bee committed, or the offendor apprehended) ſhall by the ſaid Iuſtices (for euery ſuch offence) be committed to the common Gaole for three moneths, without bayle, vnleſſe the ſaid offendor ſhall forthwith vpon the ſaid conuiction, pay to the vſe of the poore there, xx.s. for euery Hare, Fowle, and Egge, ſo taken or deſtroyed, and forty ſhillings for hauing ſuch Greyhound, ſetting Dogge, or Nette. Or after one moneth after his commitment, become bound by recogniſance with two ſufficient ſureties in xx.li. a peece, not to offend thereafter, in any the particulers aforeſaid: which ſayd recogniſance ſhall bee taken by any two Iuſtices of peace of the county where the offendor is impriſoned, and by them ſhall bee returned to the then next quarter Seſſions: So that any two Iuſtices may examine, heare, and determine all offences againſt this ſtatute made 1. *Iac. Regis*, and may performe euery other thing requiſite for the due execution thereof.

By the ſtatute made 7. *Iac. Reg.* Euery perſon which ſhall take, kill, or deſtroy any Feaſant, or Partridge, with ſetting Dogges, and Nettes, or with any manner of Nettes, Snares, or Engines (it being proued by the confeſſion of the party, or by the oath of one ſufficient witneſſe before any two Iuſtices of peace) ſhall by the ſaid Iuſt. be committed for 3 moneths without baile, vnleſſe the ſaid offendour ſhall forthwith pay to the vſe of the poore there xx.s. for euery ſuch Feaſant, and Partridge: And further to become bound by recogniſance in the ſumme of 20.li. neuer to take, kill, or deſtroy any Feaſant, or Partridge any more; which recog. ſhalbe taken by any one Iuſt. of P. of the county where the offence ſhalbe committed, And ſhalbe returned to the next quarter Seſſions. 7. Iac. 11.

Euery perſon which ſhall hawke at, kill, or deſtroy any Feaſant, or Partridge, with any kind of Hawke, or Dogge, (by color of Hawking) betweene the firſt of Iuly, and the laſt day of Auguſt, (the ſame being proued by the confeſſion of the party, or by the oath of two ſufficient witneſſes, before any two Iu. of P. 7. Iac. 11.

of

of the county where the offence was committed, or the offendour apprehended) ſhall by the ſaid Iuſtices be committed to the common Gaole, there to remain for one moneth without bayle, vnleſſe the ſame offendour ſhall forthwith pay to the vſe of the poore there 40.s. for euery ſuch hawking at Feaſant or Partridge, and 20.s. for euery feaſant or partridge which any, & euery ſuch offendor by himſelfe, his hawke, or dog, ſhal take, kill, or deſtroy, contrary to the intent of this ſtatute.

7. Iac. 11. But no offendor puniſhed by vertue of this law, ſhall be puniſhed by vertue of any other law, for the ſame offence. Alſo ſuch offences muſt be complained of to the Iuſtices of P. within 6. moneths after the offence.

7. Iac. 11. Any two Iuſtices of peace may make their warrant vnder their hands, to any Conſtable, to enter into, and ſearch the houſes of any perſon (other then of ſuch as haue free warren, or are Lords of Mannors, or haue freehold of 40.li. by the yeare, or more of eſtate of inheritance, or haue foureſcore pounds by the yeare for terme of life, or be worth in goods 400.li.) being ſuſpected to haue any ſetting dogges or nettes, for the taking of Feaſants and Partridges: And whereſoeuer they ſhall finde any ſuch dogge or nettes, the ſame to take, carry away, detaine, kill, deſtroy, and cut in peeces.

By the ſame ſtatute 7. *Iac. cap.* 11. euery ſuch perſon as hath free warren, or is Lord of a Mannor, or hath other eſtate as aforeſaid, is allowed (on their owne freehold) to take Feaſants and Partridges in the day time only, and betweene Michaelmas and Chriſtmaſſe.

Peace.

EVery Iuſtice of peace hath authority and power giuen him (by the firſt *Aſſignauimus*, or clauſe in the commiſſion) to keepe and cauſe to be kept the Kings Maieſties peace; by force of which words, they haue aſwell the auncient power touching the keeping of the peace, which the ancient conſeruators of the peace, had by the common law; as alſo all authority which the ſtatutes ſince haue added thereto: And ſo they may cauſe to be Lamb. 46. kept all the ſtatutes and lawes now in force, which beene made for the peace, or keeping thereof: and more eſpecially they may arreſt, or cauſe to bee arreſted, and ſent to the gaole, all murtherers, Robbers, and Felons, and perſons ſuſpected of ſuch things.

They may alſo ſuppreſſe, and bind to the peace, or good behauior, all affrayors, and all perſons vnlawfully and riotouſly aſſembled,

ſembled, or vnlawfully wearing armour, or any weapons, by night or by day, or otherwiſe putting the people in feare, and all vnlawfull night-walkers, and the like: All which may well bee ſaid to be diſturbances or breaches of the peace. See more for theſe vnder their particular titles.

Plague.

One Iuſtice. IF any perſon infected, or dwelling in a houſe infected with the plague, ſhall be by any Iuſtice of peace (or other officer) commanded to keepe his houſe, And notwithſtanding ſhall wilfully goe abroad, and conuerſe in companie, hauing any infectious ſore vpon him, it is felony: And if ſuch perſon ſhall not haue ſuch ſore about him, yet for his ſaid offence he ſhall be punished as a Vagabond, by the appoyntment of any Iuſtice of peace, as it ſeemeth; And further ſhall be bound to his good behauyour, for one whole yeare. 1. Iac. 31. P. 4.

It ſhall be lawfull for Iuſt. of peace (and other head officers in corporate townes) within their ſeuerall limits, to appoint Searchers, Watchmen, Examiners, Keepers, and Buryers, for the perſons and places infected: and to miniſter to them oaths for the performance of their ſaid ſeueral offices: And to giue them other directions, as to them ſhall ſeeme good. P. 5.

Two Iuſt. Any two Iuſtices of peace, of any city, borough, towne corporate, and places priuiledged, may taxe all and euery Inhabitant, and all houſes of habitation, lands and tenements within the ſaid city or borough &c. or the liberties thereof, for the reaſonable reliefe of ſuch perſons as are infected, or inhabiting in houſes infected in the ſame city &c. And may leuy the ſame taxes (by diſtreſſe and ſale of the goods of euery perſon refuſing, or neglecting to pay the ſayd taxes) by warrant vnder the hand and ſeale of two ſuch Iuſtices: And in default of ſuch diſtreſſe, and that refuſal be made of payment, vpon returne thereof, the ſaid Iuſt. by like warrant may commit ſuch perſon to the Gaole, there to remaine without bayle, vntill hee ſhall ſatisfie the ſame taxation, and the arrerages. P. 7.

If the Inhabitants of any ſuch city &c. bee vnable to releeue their infected perſons, vpon certificate thereof, by the head officer, and other Iuſtices of peace of ſuch city &c. Or by any two of them, to any two Iuſtices of Peace of the county of, or neere to the ſaid city &c. ſo infected, Any two ſuch Iuſtices of the county may taxe the Inhabitants of the county within fiue miles of the ſaid place infected, at ſuch reaſonable weekly rates as they ſhall thinke fit, to be leuied by warrant from the ſaid two Iuſtices P. 2.

by

by diſtres, and ſale of goods, and in default thereof, by impriſonment, as aforeſaid.

P.3. If any ſuch infection ſhall be in any city &c. where there are no Iuſtices of peace, or within a vyllage within any county: then any two Iuſtices of peace of the ſame county, may taxe the Inhabitants of the ſaid county, within fiue myles of the ſaid place infected, at ſuch reaſonable weekely rates as they ſhall thinke fit, for the reliefe of the ſaid places infected, to be leuyed by ſale of goods (vpon warrant as aforeſaid.) And in default thereof, by impriſonment, (vpon like warrant) as aforeſaid.

P.3. All ſuch taxes made by the Iuſtices of the county for the reliefe of ſuch city &c. ſhall be diſpoſed by the ſayd Iuſtices of the ſaid county, and as they ſhall thinke fit (where there are no Iuſtices of peace in ſuch city &c.) And where there are Iuſtices of P. then in ſuch ſort as the head officer and Iuſtices of peace there, or any two of them ſhall thinke fit.

P.3. All ſuch taxes made either in city &c. or county, ſhall (by the ſayd Iuſtices that taxed them, as it ſeemeth) bee certified at their next quarter Seſſions, to be holden within ſuch city &c. or county, reſpectiuely, there to bee continued, inlarged, extended to other parts of the county, or determined, as at the ſayd Seſſions ſhal be thought fit.

P.6. But no Iuſtice of peace ſhall doe or execute any thing before mentioned, within either of the vniuerſit es of Cambridge or Oxford, or within any Cathedrall Church, or the liberties thereof, or within the Colledges of Eaton, or Wincheſter; but the Vice-Chancelor of the Vniuerſity, Biſhop and Deane of ſuch church, and Prouoſt or Warden of the ſayd colledges ſhall doe and execute all things aboue mentioned, within their ſeuerall precincts.

Poore.

P.1. 43.Eliz.2. ANy one of thoſe Iuſtices of peace who may appoint ouerſeers for the poore, may alſo ſend to the houſe of correction (or common Gaole) ſuch as will not imploy themſelues in worke (being therunto appointed by the ouerſeers according to the ſtatute.) *One Iuſtice.*

43.El.2. P.2. Two (or more) Iuſtices of peace, whereof one to bee of the *Quorum*, dwelling in or neere the pariſh or diuiſion &c. ſhall yearely within one moneth after Eaſter, vnder their hands and ſeales, appoint foure, three, or two ſubſtantiall houſholders in euery pariſh, to be ouerſeers of the poore within the ſame pariſh, ſhall ioine with the churchwardens therein. *Two Iuſtices.*

Such

Such Ouerſeers and Churchwardens (or the greater part of them) with the conſent of two or moe ſuch Iuſtices, ſhall take order from time to time for ſetting their poore on worke, putting out apprentices, and relieuyng their impotent, as followeth.

1 Firſt for ſetting to worke the children of all ſuch, whoſe parents ſhall not by (the greater part of) the ſaid Ouerſeers bee thought able to keepe and maintaine their children, which children, they by the aſſent of two ſuch Iuſtices, may alſo put out to be apprentices, *ſcil.* the men children till their age of 24. And the women children till their age of 21. P. 2. 5.

And all poore chyldren ſo bound apprentices, may be taken and kept as apprentyces, by their maſters, any former ſtatute to the contrary notwithſtandyng. See 1. *Ia. ca.* 25.

2 For ſetting to worke all ſuch perſons (maried or vnmaried) as, hauing no meanes to maintayne them, vſe no ordinary and dayly trade &c.

3 To rayſe weekely, or otherwiſe (by taxation of euery inhabitant, and euery occupyer of lands, houſes, tythes, mynes, or ſaleable vnderwoods (proportioning them to an annuall benefit &c. in the ſame pariſh, in ſuch competent ſummes of mony as they ſhall thinke fit) a conuenient ſtocke of ſome ware or ſtuffe to ſet the poore on worke: and alſo competent ſummes of mony towards the neceſſary relyefe of their lame, impotent, olde, blinde, and other poore not able to worke: and alſo for the putting out of ſuch chyldren (as aforeſaid) to be apprentices.

Two ſuch Iuſtices of peace are to allow the cauſe or excuſe of ſuch Ouerſeers, as ſhall not meete euery moneth, to conſider of the premiſſes, or as ſhall be otherwiſe negligent in their office. Lãb. edit 1614 pag. 360.

Two ſuch Iuſtices ſhall take the account of ſuch ouerſeers, at the end of their yere, and of the Churchwardens in euery of theſe particulars following. P. 2.

1 Of all ſummes of money by them receiued, or rated, and not receiued.

2 Of all ſuch ſtocke of ware or ſtuffe as they, or any of their poore haue in their hands.

3 What apprentices they haue put out.

4 What poore they haue ſet to worke, or relieued.

5 Whether they haue ſuffered any of their poore to wander and begge out of their towne, or in the high wayes, or in their towne without their direction. See for this 39. *El.* 3. *&* 4. *& Lamb.* 206. *Reſol.* 15.

6 Whether they haue monethly mette to conſider of theſe things.

7 Whither

Lamb.428. 7 Whither they haue aſſeſſed the inhabitants, and occupyers of lands &c. in their pariſh, *ſc.* all ſuch as are of ability, and with indifferency.

Ibid. 8 Whether they haue endeauoured to leuy and gather ſuch aſſeſſments.

9 Whether they haue beene otherwiſe negligent in their office: within which words alſo, there ſeemeth to lye included, if they ſhall neglect to execute the Iuſtices warrants, to them, or any of them directed, for the leuying of any forfeiture according to this ſtatute. See *P.* 2. *&* 12.

Now if the Churchwardens, or any of the Ouerſeers, ſhall refuſe to make and yeeld a true and perfect accompt to the ſayd Iuſtices (of all ſuch ſummes of money, and of all ſuch ſtocke)

P.2.4.10. as aforeſayd, or ſhall deny to pay the arrerages due vpon their accompt, The ſayd two Iuſtices may commit them to the common Gaole, there to remayne without bayle, till they haue made a true account, and ſatisfied and payed to the new Ouerſeers ſo much of the ſaid ſumme and ſtocke, as vpon the ſayd account ſhal bee remayning in his (or their) hands &c.

P.2. And as for other the negligences of the Churchwardens and Ouerſeers in their office, or in the execution of the orders aforeſayde, euery of them making default, ſhall forfeit for euery ſuch default twenty ſhillings, (but it ſeemeth ſuch default muſt be proued eyther by the offendours confeſſion, or by exa-

P.12. amination of witneſſes) which forfeitures ſhall bee leuyed (by the new Churchwardens and Ouerſeers, or one of them) by warrant from any two ſuch Iuſtices of peace, by diſtreſſe and ſale of the offendours goods &c. or in defect of ſuch diſtreſſe, it ſhall be lawfull for any two ſuch Iuſtices of peace to commit the offendour to the common Gaole, there to remayne without bayle till the ſayd forfeitures ſhalbe payed: And the ſayd forfeitures ſhall be imployed to the vſe of the poore of the ſame pariſh.

P.4. Two ſuch Iuſtices may make their warrant (as well to the preſent as ſubſequent Ouerſeers) to leuy all ſuch ſummes of money, and all arrerages, (of euery one that ſhall refuſe to contribute according as they ſhall bee aſſeſſed) by diſtreſſe and ſale of the offendours goods (rendering to the party the ouerplus,) And in defect of ſuch diſtreſſe, ſuch two Iuſtices may commit him or them to the common Gaole, there to remayne without bayle, till payment bee made of the ſaid ſumme and arrerages.

P.3. If the ſaid Iuſtices doe perceiue that any pariſh is not able to relieue their poore, Then any two ſuch Iuſtices may taxe,

and assesse any other persons within the hundred (where the said parish is) to pay such summes of money to the Ouerseers of the said poore parish for the said purposes, as the said Iustices shall thinke fit, according to the intent of this law.

If any persons finde themselues grieued with any taxe, or other act done by the Ouerseers, or by the said Iustices of peace, they are to be relieued at the quarter Sessions. P. 7.

Head officers of cities and corporate townes (being Iustices of peace) haue the same authoritie within their limits, as herein is limited to Iustices of peace of the countie &c. And no other Iustices of peace are to enter or meddle there. P. 9.

If any parish shall extend into two counties, or part thereof to lie in any citie or corporate towne where they haue Iustices: Then the Iustices of euery countie &c. shall intermeddle onely within their owne limits: And euery of them respectiuely within their limits, are to execute this law concerning the nomination of Ouerseers, binding of apprentices, giuing warrants to leuie taxations, taking accompt of Ouerseers, and committing such as refuse to accompt, or to pay their arrerages: And yet the said Ouerseers shall without deuiding themselues execute their office in all places within the said parish; but shall giue vp seuerall accompts &c. P. 10.

The Father and Grandfather, and Mother, and Grandmother, and the Children and Grand-children (of euery poore impotent person, or other person not able to worke) being of sufficient abilitie, shall relieue such poore persons in such manner as the Iustices of peace (of that countie where such sufficient person dwelleth) at their generall Sessions shall assesse, vpon payne that euery one fayling therein to forfeit twentie shillings for euery moneth: the said forfeiture to be leuyed by warrant from any two Iustices of peace (the one being of the *Quorum*) within their limits, by distresse and sale as aforesaid: And in defect of distres, Any two such Iustices may commit the offendor to prison, there to remaine without bayle, till the said forfeiture be paied: And the same forfeiture shall be imployed to the vse of the poore of the same parish. Resol. 16. 17. P. 8. P. 12. 43. Eliz. 2.

Now for the better furtherance of this so needfull and charitable a seruice. And for the better helpe as well of the Iustices of peace, as of the Ouerseers &c. I thought it not amisse to set downe here certaine resolutions and aduises of the Iudges (as I find them in Master Lambert) together with certaine other obseruations to this purpose.

If there be but one Churchwarden in the parish, hee suffiseth with Resol. 20.

with the other Ouerſeers.

Reſol. 8. If the parents be able to worke, and may haue worke, they are to find their children by their labour, and not the pariſh: But if they bee ouer burthened with children, it ſhall bee a very good way, to procure ſome of them to be placed apprentices, according to the ſtatute. And ſuch apprentices would be put out eſpecially to husbandrie and huſwiuerie.

Younge children, whoſe parents are dead, are to bee ſet on worke, relieued, or maintained, at the charge of the towne where they were dwelling at the time of the death of their parents: and are not to be ſent to their place of birth &c. For if the parents were not rogues, wee may not make the children rogues (except they wander abroad and begge.) This was the direction of *Flemming* chiefe Iuſtice in a caſe betweene *Weſton* and *Cowledge*. *Anno* 11. *Iac. Regis*.

Reſol. 7. If any (not being rogues) ſhall trauell with their children through a towne, and the father or mother dye, or runne away, that towne is not bound to keepe their children, nor to ſend them away, but only in charitie, except they become wandering beggers.

Reſol. 10. Such perſons as bee of any pariſh, and haue able bodies to worke, if they refuſe to worke at ſuch wages as is taxed (or commonly giuen) in thoſe parts, are to bee ſent to the houſe of correction, and not to their place of birth, or laſt dwelling by the ſpace of a yeare: But if they haue any lawfull meanes to liue by, though they bee of able bodies, and refuſe to worke, yet are they not to be ſent to the houſe of correction.

Reſol. 15. 39. Eliz. 3. None may be ſuffred to take reliefe at any mans doore, though within the ſame pariſh, vnleſſe it be by the order of the ouerſeers: Neither may any be ſuffered to beg by the highwaies, though in their owne pariſh.

Reſol. 9. No man is to be put out of the towne where he dwelleth: nor to be ſent to their place of birth (or laſt habitation) but a vagrant rogue: Nor to be found by the towne, except the partie be impotent; but ought to ſet themſelues to labor, if they be able, and can get worke: If they cannot get worke, the Ouerſeers muſt ſet them to labour.

And ſo of them that haue or ſhall haue houſes, when their eſtates bee expired, And ſeruants whoſe times of ſeruice are ended, though they cannot get houſes; for they muſt prouide themſelues houſes a new, if they bee not impotent. *Ibidem*.

So that ſuch perſons whoſe eſtates of their houſes be ex-

pired, And ſeruants when their ſeruice is ended, they ſhall not be put out of the townes where they ſo laſt dwelt, or ſerued: (Neither are they to bee ſent from thence to their place of birth, or laſt habitation) but are to bee ſetled there to worke, being able of body; or being impotent, to be there relieued: And yet (it ſeemeth) that if ſuch perſons ſhall wander abroad begging, out of that pariſh, then they may bee ſent as vagabonds (from the place where they ſhall bee taken wandring or begging) to their place of birth &c.

Such as ſhall remoue or put any out of their pariſh, that bee not to be put out, This is againſt the ſtatute, concerning the reliefe of the poore, and finable: And if any haue beene ſo ſent, they may be ſent backe againe. Reſol. 11.

Now this fine ſeemeth to be by force of the ſtatute 39. *Eliz. cap.* 4. and to amount to fiue pound. And is to be leuied by diſtres and ſale of the offendours goods, vpon a warrant vnder the hands and ſeales of any two Iuſtices of peace, either vpon the confeſſion of the offendors, or vpon the teſtimonie of 2. ſufficient witneſſes. P. Vag. 5. 11.

All ſuch perſons as (in any wiſe) ſhall diſturbe the execution of this law, concerning the reliefe, or ſetting of the poore, ſhall forfeit fiue pound, and any two Iuſtices of peace may bind ſuch offendors to their good behauiour: And may alſo, by warrant vnder their hands and ſeales, cauſe the ſaid 5. li. to bee leuied by diſtreſſe and ſale of the offendors goods as aforeſaid: which forfeiture, the ſaid two Iuſtices alſo by their diſcretion may order to be imploied to the reliefe of the poore where the offence ſhall be committed, as it ſeemeth. *P. vag.* 11. But *quere* (for the fine or forfeiture) for that the ſtatute 39. *El. cap.* 3. made for the reliefe of the poore, is expired. 39. El. P. Vag. 5. 11.

Next here is conſideration to be had of three ſorts or degrees of poore.

1. Poore by impotencie.
   1 The aged, and decrepit, that are paſt labour.
   2 The infant, fatherleſſe and motherles, and not able to worke.
   3 The perſon naturally diſabled, either in wit, or member, as the Ideot, Lunaticke, Blind, Lame &c.
   4 The perſon viſited with grieuous diſeaſe or ſicknes, though caſually, yet thereby for the time being impotent.

All theſe (being impotent, or not able to worke) are to bee found, and prouided for by the Ouerſeers, of neceſſary reliefe.

2 Poore

2 Poore by casualty.
1 The person casually disabled, or maimed in his body, as the Souldier or Labourer &c. maimed in their lawfull callings.
2 The housholder decayed by casualty of fire, water, robbery, suretiship, &c.
3 The poore man overcharged with children.

All these last (and such others) having no sufficient meanes to maintayne themselues, are to be holden, or set to worke, (by the Overseers) and being not able to liue by their worke, are further in charity to be relieued in some reasonable proportion, according to their severall wants and necessities.

3 Thriftlesse poore.
1 The riotous and prodigall person, that comsumeth all with play, or drinking &c.
2 The dissolute person, as the strumpet, pilferer, &c.
3 The slouthfull person that refuseth to worke.
4 All such as wilfully spoyle, or imbesill their worke &c.
5 The vagabond that will abide in no seruice, or place.

For all these last, the house of correction, or common gaole is fittest: And yet such persons being able in body, are to bee compelled to labour; for the rule of the Apostle is, that such as would not worke, should not eate. 2. *Thess.* 3. 10.

And if any of them happen to proue impotent, it seemeth they are to be relieued by the towne: But I leaue that to better consideration.

7. Iac. 4. Where any summes of money are giuen to bee continually imployed for the bynding out of Apprentices, the Parson, or Vicar, Constables, and Overseers for the poore, in townes not incorporate, are by the statute appoynted to haue the disposing of such stockes or summes of mony: which persons shall once euery yeare, within one moneth after Easter day, make a true and perfect account before two or moe Iustices of peace (dwelling in or next to euery the said townes or parishes) of all such sums as they haue so imployed, And of all bonds and sums remaining &c.

39. El. 4. 1. Ia. 25. Two Iustices of Peace may licence poore diseased persons to trauell to the bathes for remedy of their griefes; so as they bee *Licences.*

prouided of reliefe &c. for their trauell, and beg not. See hereof 1 5.108. *poſtea tit. Rogues.*

The Iuſtice of peace dwelling neere where any perſon ſuffering ſhipwreck ſhall land, or where any poore Souldier or Mariner ſhall land, may, and ought to make a teſtimoniall vnder his hand to ſuch perſons of their landing &c. and thereby to licence them to paſſe the next direct way to their place of byrth or dwelling &c. limiting them therein a conuenient time for their paſſage. See the tytle *Rogue*. 39. Eliz. 4. 39. Eliz. 17.

But (it ſeemeth) no Iuſtice or Iuſtices of peace may or can in any caſe licence any poore man to wander or beg at all, nor may licence any poore to trauell, but onely in theſe former three laſt caſes, and ſome few other. See the tytle *Rogue*.

Preachers.

One Iuſtice. IF any perſon ſhall of his owne authority, willingly diſturbe any Preacher in the time of his ſermon, or ſhall bee ayding, procuring, or abetting thereto, or ſhall reſcue any ſuch offendor being apprehended, or ſhall diſturbe the arreſting of any ſuch offendour: And that any of the ſayd offendours ſhall bee brought before any Iuſtice of peace (within the county where the ſayd offence ſhall bee committed) Then euery ſuch Iuſtice of peace (vpon due accuſation thereupon made) ſhall forthwith commit euery ſuch offendour (ſo brought before him) to ſafe cuſtody, by his diſcretion. 1. M. 1. cap. 3. P. 1. 2.

Two Iuſtices. Within ſixe dayes (after accuſation had of any of the ſayd offences, and after the committing of the ſayd offendour to ſafe cuſtody by one Iuſtice of the peace) one other Iuſt. of the peace of that ſhire muſt ioyne with the firſt Iuſtice in the examination of the ſayd offence, And if they two vpon their examination ſhall find the party accuſed guilty, and that by two ſufficient witneſſes, or by his owne confeſſion, Then ſhall they commit him to the Gaole there to remaine without bayle for three moneths then next enſuing, And further to the firſt quarter Seſſions &c. But enquire, if all this ſtatute be not repealed by 1. *El. cap.* 2. in generall words at the latter end thereof. *Lamb.* 199. Ibidem.

Propheſies.

IT ſeemeth that euery Iuſtice of peace may impriſon (by the ſpace of one yeare without bayle) ſuch as aduiſedly ſhall publiſh any falſe propheſies (contrary to the tenour of the ſtatute 5. *Eliz.* 15.) to the intent thereby to make any rebellion, inſurrection,

rection, or other diſturbance within the Kings dominions.

Priſon.

2 Iac. 10. P. 78. ANy Iuſtice of Peace, hauing ſent or committed to the gaole an offendor (for any offence or miſdemeanour) if the offendor (hauing meanes or abilitie thereto) ſhall refuſe to beare and defray the charges of ſuch as ſhall conuey and guard him or them to ſuch gaole, Then the ſaid Iuſtice may giue his Warrant vnder his hand and ſeale to the Conſtables of the Hundred, or Conſtable of the Towne where ſuch offendor ſhall be dwelling, or from whence hee ſhall bee committed, or where the ſaid offendor ſhall haue any goods within that Countie or Libertie, to ſell ſo much of the offenders goods, as will ſatiſfie ſuch charges, &c. And where the offender hath no ſuch goods, then the charge thereof muſt bee borne by the Towne, where the offender was taken; And the taxation made on the towne (for that purpoſe) muſt bee allowed vnder the hand of one Iuſtice of Peace; And by like Warrant from ſuch Iuſtice, the goods of the perſon refuſing to pay ſuch taxation, may bee diſtreined and ſolde.

Purueyors.

13. Eliz. 21. P. 33. 1. Iac. 25. IF any perſon within fiue miles of Cambridge, or Oxford, ſhall refuſe reaſonably to ſerue the prouiſion of the ſaid Vniuerſities, Then may the Vice-chauncellor, and any two Iuſtices of peace within the ſame Vniuerſitie, Towne, or Countie, vnder their hands and ſeales, allowe any the Kings Purueyors, to prouide any Corne, or Victuall of any ſuch perſon, to the vſe of the King, as they lawfully may in other places without the ſaid precinct.

2. & 3. Ph. & Mar. 15. 13. Eliz. 21. P. Iuſt. 60. P. Puru 32. The Vicechauncellor, with any two Iuſtices of peace of the Countie, may (by the oathes of twelue men) enquire of, and puniſh the offences of Purueyors, committed contrary to the ſtatutes for the priuiledges of the Vniuerſities, &c. *ſc.* in taking or bargaining for any victuall or graine, within Cambridge or Oxford, or within fiue miles of either of them, without the licenſe of the Chauncellor, or Vicechauncellor in writing vnder the ſeale of their office; or not according to the ſaid licence. See more of *Purueyors, in tit. Felony.*

Recuſants.

Recuſants.

One Iuſtice.

IF any perſon aboue ſixteene yeares of age, doe forbeare to come to Church, by the ſpace of 12. moneths contrary to the ſtatute 1. *Eliz.* 2. Any Iuſtice of peace of the Countie where ſuch an offender ſhal dwell or be, may make thereof certificat into the Kings Bench, to the end ſuch offenders may there be bound to their good Behauiour. 22.El.1. P.1.

Any one Iuſtice of peace may require the ſubmiſſion and declaration of conformitie to his Maieſties lawes, of Recuſants and Sectaries within three moneths after their conuiction &c. And in default of ſuch ſubmiſſion, may require them to abiure this realme: which abiuration notwithſtanding ſhall be in open Seſſions, &c. where one Iuſtice of peace may require a popiſh Recuſant to take the Oath of Allegeance. See more heereof in this Title. 35.Eliz.1. P.19.

Any Iuſtice of peace within the Countie, in which any Ieſuite or other Popiſh Prieſt, or other Eccleſiaſticall perſon ſhall arriue or land, within three daies after their landing, may take their ſubmiſſion, oath, and acknowledgement, touching their obedience to the Kings Maieſtie, and his lawes prouided in caſes of religion: But if it be any other ſubiect, who is no Prieſt &c. and yet brought vp in any Seminary, they muſt make their ſubmiſſion, and take the oath, &c. before two Iuſtices &c. See more in this title. 27.El.2. P.Ieſuits.7. P.Ieſuits.4.

Euery ſubiect knowing any Ieſuite, or Popiſh Prieſt to bee within the Kings dominions, ought to diſcouer the ſame to ſome Iuſtice of peace, or other higher Officer, within twelue dayes, &c. And ſuch Iuſtice of peace ought within eight and twentie dayes after ſuch diſcouery made to him, to giue information thereof to one of the Kings Priuie Councell vpon paine of two hundred markes. 27.Eliz.2. P.Ieſuits.10.

If any perſon to whom any *Agnus Dei*, *Croſſe*, *Picture*, Beads or ſuch ſuperſtitious things, ſhall be deliuered or offered, doe diſcloſe ſuch deliuerer or offerer to any Iuſtice of peace, &c. That Iuſtice of peace within fourteene dayes, muſt declare the ſame to one of the Kings Priuy Councel, or elſe he ſhall incurre the danger of a *Præmunire*. 13.Eliz.2. P.Rome 6.

If there be any ſubiect of this realme, be he Popiſh Recuſant, (conuict or not conuict) or other perſon, that ſhall not repaire euery Sunday to ſome church, and then and there to abide orderly during the time of prayer, preaching, or other ſeruice of God there Co.11.65.b 3.Iac.4. P.50. P.Sacraments.5

P. Sacraments 5. there vsed, according to the statute made 1. *Eliz. cap.* 2. Then any one Iustice of peace of that limit where the said partie shal dwel, vpon proofe to him made of such default (by confession of the partie, or oath of witnesses) may within one moneth next after such default, call the partie before him; and if he shall not prooue sufficient cause of his said absence, the said Iustice of peace may giue warrant vnder his hand and seale, to the Churchwardens to leuie twelue pence for euery such default, by distresse and sale of the offenders goods &c. And in default of such distresse, the said Iustice of peace may commit such offendor to prison, vntill paiment be made of the said summe so forfeited; the same to be imployed to the vse of the poore. Also this statute seemeth to extend to women that be married: see *Co.* 11. 61. *b.* See the Title, *Riot.*

3. Iac. 5. P. 60. The partie that doeth first discouer to any Iustice of peace, any Recusant, or other person entertaining or relieuing any Iesuite, Seminary, or popish Prieste; Or any Masse to haue ben said, and any of them that were present thereat, within three dayes after the offence, (and by reason of his discouery any of the offendors be taken and conuicted) shalbe freed from danger of the offence, if he be an offender therein, and haue the third part of the forfeiture which shalbe forfeited by such offence, 3. *Iac. cap.* 5.

P. 70. 71. Before some Iustice of peace of the countie, libertie, or limit, where the parents of a child sent beyond seas without license, did dwell, such child must take the oath of allegeance expressed, 3. *Ia. cap.* 4. And they that were beyond seas before the making of this act, are to take the same oath within sixe moneths after their returne, before some Iustice of peace where such persons inhabiteth: before they can take the benefit of any gift, conueyance, deuise, or discent, &c. of any lands or tenements &c. 3. *Ia. ca.* 5.

P. 62. Popish Recusants indicted or conuicted, and all other persons which haue not repaired to some vsual church or chappel, & ther heard diuine seruice, by the space of three months last past, dwelling or which shal dwel in any county within ten miles of the citie of London, shal depart from thence according to this stat. and deliuer vp his or her name to the next Iustice of peace in the same countie, vpon paine of forfeiture of 100. li. 3. *Ia. cap.* 5.

P. 63. Any of the foure Iust. of peace, which by this stat. may licence a conuned Recusant to trauel, may minister the oath, to be taken by such Recusant, that he hath truely informed them of the cause of his iourney, and that hee shall not make any causeless stayes, 3. *Iac. cap.* 5.

3. Iac. 4. P. 45 46. Any two Iust. of P. (the one being of the *Quorum*) may require any popish Recusant, man and woman, of the age of 18. yeares, *Two Iustices.*

or

or aboue, which is conuicted or indicted for recusancie, or which hath not receiued the Communion twice the yeare past; or which trauaileth the Countrey, and is vnknowne (and being examined vpon oath, shall not denie themselues to be Recusants &c.) to take the oath of Allegeance appointed by the statute, 3. *Iac. ca.* 4. And if such person shall refuse to answere such Iustices of peace vpon Oath, or to take the said Oath of Allegeance, then the said two Iust. shall commit the same person to the common gaole, there to remaine without baile, vntill the next Assises or quarter Sessions: But noble men and noble women are excepted, as not to be dealt withall herein by the Iust. of peace.

7. Iac. 6. Also two Iustices of Peace may take the said Oath of allegeance of such persons as haue charge of Castles, Fortresses, Blockhowses, or Garrisons; And of all Captaines hauing charge of Souldiers within this realme: And vpon refusall may commit the offender, being of the age of eighteen yeares, to the common gaole, there to remaine without baile till the next Assises or quarter Sessions. 7. *Ia.* 6.

Also by the same stat. 7. *Ia. c.* 6. any two Iust. of P. the one being of the *Quorū*, may require any other person or persons, man or woman, be they recusants or not, of the age of 18. yeres or aboue vnder the degree of a Baron or Baronnesse, to take the said oath.

7. Iac. 6. And by the said stat. if any person whatsoeuer, of the age of 18. yeares (vnder the degree of a Baron) shal stand and be presented, indicted, or conuicted, for not comming to church, or receiuing the Communion, before the Ordinary, or any other hauing lawfull power to take such presentment or inditement; Or if the Minister, pety constable, or Churchwardēs, or any two of them, shal complaine to any one Iust. of peace neere adioining, and the said Iustice shall find cause of suspition, Then that Iustice, or any one other Iust. of P. within whose commission or power such person shalbe, vpon notice thereof, shall require such person to take the said oath; And if any person shal refuse to take the said oath tendred to him or her, as aforesaid, then such Iustice or Iustices shall commit such offendor to the common gaole, there to remaine without baile, till the next Assises or quarter Sessions. *One Iustice.*

3. Iac. 4. P. 45. The said two Iust. of peace shall certifie in writing at the next quarter Sessions, the names and place of abode, of such persons as haue so taken the said oath before them, by force of the statute, 3. *Iac.* 4. *Two Iustices.*

And it seemeth requisite, that the Iustices or Iustice of peace, doe make like certificate (at the next Assises or quarter Sessions) of such persons as haue taken the said oath before them, by force of the statute. 7. *Iac.* 6.

Such

3 Iac. 4. P. 49. Such perſons as haue bene reconciled to the Pope, if they ſhall returne into the realme, and thereupon within 6. dayes next after their returne ſhall ſubmit themſelues to his Ma. and his lawes, before any two Iuſt. of peace, ioyntly or ſeuerally, of the countie where they ſhall arriue, the ſaid Iuſt. may take ſuch ſubmiſſion, and withall may take their oath to the Supremacy, and their Oath of allegeance; And the ſaid Oathes ſo taken, the ſaid Iuſtices ſhall certifie at the next quarter Seſſions vpon peine of fourtie pounds.

27. Eliz. 2. P. Ieſuits. 4. Any two Iuſtices of Peace of the Countie where any of his Maieſties ſubiects (not being a Ieſuite, or other Popiſh Prieſt &c.) brought vp in any Seminary, ſhal arriue within ſixe months next after proclamation to be made in that behalfe in the City of London vnder the great Seale of England, may (within two daies next after ſuch returne) receiue his ſubmiſſion to his Maieſtie and his Lawes, and take his Oathe to the Supremacie.

7. Iac. 8. If any maried woman (vnder the degree of a Baroneſſe) being lawfully conuicted as a Popiſh recuſant, ſhall not within three monethes (after ſuch conuiction) repaire to the Church, and receiue the Communion &c. Any two Iuſtices of Peace (the one being of the *Quorum*) may commit her to priſon, there to remaine without baile, vntill ſhe ſhall conforme her ſelfe &c.

3. Iac. 5. P. 74. Any two Iuſtices of peace from time to time, may ſearch the houſes and lodgings of euery popiſh Recuſant conuict, and of euery perſon whoſe wife is a popiſh Recuſant conuict, for popiſh Bookes and Reliques of Poperie; And they may preſently deface and burne ſuch Bookes and Reliques as they ſhall finde: yet if it bee a Relique of any price, the ſame is to bee defaced at the generall Seſſions of the peace, and to bee reſtored to the owner.

35. Eliz. 2. P. 31. A conuicted popiſh Recuſant of ſmall abilitie, that ſhall not repaire to his place of vſuall dwelling, or place of birth, &c. and there notifie himſelfe to the Miniſter, and Conſtables (according to the Statute of 35. *Elizab.*) Or ſhall afterwards remooue aboue fiue miles from the ſame; if after hee bee aprehended, and ſhall not conforme himſelfe within three moneths (according to this ſtatute) Then any two Iuſtices of peace may require ſuch offender to abiure the realme, and may aſſigne him the time and Hauen, &c. And euery ſuch offendor ſhall vpon his corporall oath before the ſaid Iuſt. abiure the realme &c. for euer; and his refuſing to abiure, or not departing accordingly, or returning without licence, is felony. The oath of Abiuration for felony, ſee *Stamf.* 119. 616. the latter it ſeemeth may be taken of Recuſants.

Recuſants

Foure Iust. Recusants confined to five miles, may bee licensed by any foure Iustices of peace, (and the Bishop or Lieutenant, or deputie Lieutenant, residing in the saide Countie) vnder all their handes and seales, to trauell about their necessary businesses out of the compasse of five miles. But such Licenses must specifie the particular cause of the said Licence, and the time of their absence must therein be limitted; and the party so licensed must first take his oath before the said foure Iustices, or any of them, that he hath truely informed them of the cause of his iourney, and that he shall not make any causeless stayes. 3. Iac. 5. 63.

Riotts, Rout, &c.

One Iustice. ANy one Iustice of Peace alone, may vse all good meanes to preuent a Riot or Rout before it be done; and for to stay it whilest it is in doing, and in the doing may take and imprison the Riottors, and binde them to their good Behauiour; But being once done and committed, one Iustice of peace can neither record the Riot, nor make enquiry thereof; nor assesse any fine, nor award any Processe; nor otherwise meddle to punish it (in the nature of a Riot, or Rout) but onely as a trespasse against the peace, or vpon the statutes of Northampton, or of Forcible entries; whereof see the title, *Forcible entry*. Lamb. 184. 34. Ed. 3. 1. P. Iust. 18. 14. H. 7. 8. 9.

And yet if one Iustice of peace sitting in a Iudiciall place (as in the Sessions) shall see a Riot, he may commaund them to bee arrested, and may make a record thereof, and the offenders shall be concluded thereby; But if one Iustice of peace shall see a Riot in another place, and shall command them to be arrested, and shall make a record thereof, the offendors shal not be concluded thereby, but may trauerse it. Cromp. 65.

If a Iustice of peace wil commit a man to ward, pretending vntruely, that he did a Riot, where he did none, the partie may haue an action of trespasse against him. Ibid.

Euery Iustice of peace, (being of, and in the Countie, and hauing notice of any Riot, Rout, or vnlawfull assembly) ought to haue a care of the execution of the statute made 13. *H.* 4. *cap.* 7. (*viz.* that the Rioters &c. be arrested, and remoued;) For if that statute be not executed by some of the Iustices, the two next Iust. of peace shal forfeit each of them 100. li. and euery other Iustice of peace within that Countie, in whom there shall be any default, shalbe fineable in the Starre-chamber. Dyer. 210. Lam. 321.

And therefore euery Iustice of peace of the Countie, hearing of any Rout, or of any intention of a Riot (without making any Precept, or tarrying for his fellow Iustice) shall doe well 14. H. 7. 9 b.

well to goe himſelfe (if he be able) with his ſeruants, or other
Lamb.185. power of the Countie, if need be, to the place where ſuch perſons be ſo aſſembled, and to ſuppreſſe them; and all ſuch as hee ſhall finde riotouſly aſſembled (and armed) to arreſt them, and
Lamb.79.124. to force them to put in ſuertie for the Peace, or for their good behauiour; and for refuſing to giue ſuch ſuertie, or in default of ſuertie, to impriſon them: alſo he may take away their weapons and armour, and ſeiſe and priſe them for the King. See title *Armor* and *Forcible Entry*.

14.H.7.10. And if the Iuſtice of Peace (being come to the place) ſhall not finde the Ryotters yet come thither, hee may leaue his ſeruants there, to reſtraine them in their ſaid interpriſe, or elſe arreſt ſuch offendors when they ſhall come, if they ſhall offer to commit any Ryot, or to breake the peace.

So if the Iuſtice be ſicke, hee may ſend his ſeruants (or other power of the Countie, if need be, as it ſeemeth) to the place to repreſſe it, or to arreſt ſuch offendors, and to bring them before him,
14.H.7.9 b. to finde ſuerties for the Peace: and all this he may doe and commaund by word of mouth, without any Warrant in writing; and without expecting the comming of any his fellow Iuſtices, or of the Sheriffe or vnder-Sheriffe.

P.16,17. Alſo one Iuſtice of Peace (by the ſtatutes made 1. *M.cap.* 12. and 1. *Eliz.*16.) might haue made Proclamation in the K. name, That all perſons ryottouſly aſſembled ſhould depart to their habitations, &c. (The form of which Proclamation, you may ſee in the ſame ſtat. & in P.Ryots.27.) But the ſaid ſtat. are now expired.

Alſo any one Iuſtice of P. (by the firſt *Aſſignauimus* in the Commiſſion) may cauſe to be kept and put in execution all other ſtatutes made for the repreſſing of ryots, force, and violence; but therein he muſt deale onely according to the forme and order in ſuch ſtatutes preſcribed.

Two Iuſtices. But the ordinary power of puniſhing of Ryots belongeth vn-
13.H.4.cap.7. P.175. to two Iuſtices of Peace at the leaſt: And therefore the two next Iuſtices of P. which dwell neereſt in the County, where any ryot, aſſembly, or rout of people ſhall be againſt the Law, (together with the Sheriffe or vnder-Sheriffe of the County) vpon complaint or other notice of the ryot, ſhall doe execution of the ſtat. 13.*H.*4.7. (*ſc.* of all & euery part thereof reſpectiuely as to them is appointed) euery one of them vpon pain of 100.li. And in default of the two next Iuſtices, the other Iuſtices of P. of and within
Cromp.63. Lambt.322. the county (vpon notice of ſuch ryot) ought to do execution thereof, euery one vpon danger to be fined in the Star-Chamber; but the penalty of 100.li. is only to be laid vpon the two next Iuſtices.

And if the Ryot &c. be great & notorious, wherof by common

intendment euerie perſon may take knowledge, it is not ſafe for the Iuſtices or Sheriffe, &c. to expect and ſtay, till complaint ther-of ſhall be made vnto them, or that they ſhall haue information or notice giuen them thereof, leſt they incurre thereby the ſaid penalty of 100.li.

If any other of the Iuſtices of P. of the Countie (beſides thoſe two which are next) ſhall execute this ſtatute, that ſhall excuſe the two next Iuſtices; for that the ſtatute giueth power herein to all the Iuſtices. P.R.30.

If one, or the two next Iuſtices, ſhall come, and not the Sheriffe, or vnder-Sheriffe, ſuch Iuſtices as doe come ſhall be excuſed of the forfeiture of 100.li. But though the ſaid Iuſtices ſhall be excuſed of the ſaid forfeiture, yet if there commeth but one Iuſtice of Peace, he ought to arreſt the Ryotters, & to remoue the force, otherwiſe he is finable, &c.

And if there ſhall be two Iuſtices preſent, and neyther the Sheriffe nor vnder-ſheriffe, yet thoſe two Iuſtices are fineable, if they ſhall not do all that, which (without the ſheriffe or vnder-ſheriffe) they are authoriſed to doe by the ſaid ſtatute. Lambt.321.

But no Iuſtice of Peace that dwelleth in another Countie is bound (vpon the ſaid penaltie of 100.li.) to execute the ſaid ſtatute of 13.*H.*4. although he dwelleth next to the place where the ryot is, and although he be in commiſſion of the Peace for the Countie where the ryot is, as it ſeemeth: for the words of the ſtatute are, The Iuſtices which dwel neereſt in euerie County where ſuch ryot ſhall be, and not which dwell neereſt to the place where the ryot ſhall be; and yet it ſeemeth ſafe that ſuch Iuſtice dwelling out of the county, vpon notice of ſuch ryot, doe come into the county, and doe his endeuour to ſuppreſſe the ſame ryot, and to execute the ſtat. for that he is one of the Iuſt. of the county. Lambt.321. P.5.

If the ſheriffe or vnder-ſheriffe do not come, the Iuſtices ought to ſend for them, as M. *Marrow* thinketh.

And ſome ſeeme to be of opinion, That if the ſheriffe or vnder-ſheriffe, ſhal not come to the Iuſtices, being ſent for to aſſiſt them, That then all the Iuſtices of Peace dwelling neere or remote ſhall be excuſed of the ſame penaltie of 100.li. or of any other penaltie or fine; for that the ſaid ſtatute doth giue the ſheriffe or vnder-ſheriffe equall authoritie, and as it were ioine him in Commiſſion in the copulatiue with the Iuſtices of Peace. But others ſeeme to be of another opinion, *viz.* That if the ſheriffe or vnder-ſheriffe ſhall not come, yet the Iuſtices of P. ſhall be fined if they come not and arreſt the Rvotters, and doe not moreouer proceed to do therein all that which (without the ſheriffe or vnder-ſheriffe) they are any wayes authoriſed to performe. P.R.30. Lambt.322. Cromp.63.

Now

Now what the Iuſtices of Peace may or ought to doe therein (by force of this ſtatute 13.*H.*4.7.) without, or in the abſence of the Sheriffe and vnder-Sheriffe is worthy conſideration, as being needfull for the Iuſtices of Peace to know, and ſafe for them to performe, as well for the ſpeedie preuenting of ſuch preſent miſchiefes as may happen to the Common-wealth by ſuch dangerous aſſemblies, as alſo for their ſauing of the penalty of the Law otherwiſe like to lie vpon them.

Lamb. 313. 325. But herein I dare not determine, finding that others (of good iudgement and experience) that haue written hereof, haue both ſeemed to doubt herein, and haue written ſparingly thereof.

And yet there is no doubt, but that the Iuſtices of Peace (without the Sheriffe, or vnder-ſheriffe) vpon all Ryots may and ought firſt to goe to the place; and ſuch Ryotters as they ſhall ſee or finde ryottouſly aſſembled, they may and ought to arreſt them, and to remoue the Ryotters, and may cauſe them to finde ſuerties for the Peace, or good behauiour, and for want of ſuch ſuerties may commit them to the Gaole; all which any one Iuſt. of Peace may doe.

P. Ryots. 2. Cromp. 67 b. Alſo two Iuſtices of Peace after the ryot committed (without the ſheriffe or vnder-ſheriffe, as it ſeemeth) may and ought to Enquire of the ryot; and if vpon ſuch Enquirie the ryot be found, the ſaid Iuſtices may fine and impriſon the offendors, as hereafter appeareth.

But whether two Iuſt. of P. ſeeing a ryot, may record the ſame vpon their owne view, without the ſheriffe or vnder-ſheriffe; and thereupon (without any Enquirie) may fine them for the ſame, and may commit them to priſon till they haue payed their ſaid fine, is to be conſidered. I know the common opinion to be, that they cannot record the ryot (without the Sheriffe, or vnder-Sheriffe) for ſay they (by the Statute) the Sheriffe or vnder-Sheriffe are aſſociated to the Iuſtices of Peace, and haue equall authoritie with them therein, and then conſequently the Iuſtices of Peace alone vpon their owne view, without Enquirie, can neither fine them, nor impriſon them for their fine.

14 H. 7. 9. b. Yet *Fineux* chiefe Iuſtice, ſaith that * this Statute was made for the common profite of the Realme, and for a haſtie remedie, and to auoid a preſent miſchiefe like to happen, and therefore ſhall be conſtrued largely for the common good, and in furtherance and aduancement of expedition of Iuſtice.

* *M. Lambert* thinketh it to be the ſtatute of 34. *E.* 3. 1. that *Fineux* meant, rather then the ſtat. of 13. *H.* 4.

See Co. 10. 103. b. ſuch a matter.

Alſo we ſee that any one Iuſtice of Peace may doe all theſe things in caſe of a Forcible Entry, *&c.* Any one Iuſtice of Peace may come with the power of the County, if need be, and may arreſt the offendors, and may record the force by him viewed: and

21. H. 6. fol. 5.

this Record ſhall be a ſufficient conuiction, ſo that he may thereupon commit the offendors to the Gaole, and may fine them.

Alſo this Statute of 13.*H.*4. doth relate to the ſaid Statute of Forcible Entries (8.*H.*6.) touching the conuiction of offendors by the record of the Iuſtices. P.1.

Alſo (by ſome good authorities) if two Iuſt. of P. (without the Sheriffe) ſhal ſee a ryot, they may arreſt them, and make a record thereof, and the offendors ſhall be concluded by ſuch record, for that the view of the ryot is not to be trauerſed. Fitz.Iuſt.9. 13.H.7. Cromp.65. 196.

Alſo the ſtat. 34.*Ed.*3.1. ſeemeth to enable two Iuſt. of P. to impriſon & fine Ryotters, and that without enquirie, & then conſequently, it ſeemeth they are to make a Record of the Ryot. See *Lambt.*291,292. Raſt.Iuſt.3.

Ideo quære whether two Iuſt. of P. (vpon the ſtat. of 13.*H.*4.7.) without the ſheriffe, may not, (nay, ought not vpon the penalty of 100.li.) vpon their view of a ryot, to record the ryot, & fine the offendors, & impriſon them till they haue paid their fine (as conuict by their view and record) which alſo ſeemeth to be more for the kings aduantage, rather then to hazzard the fine vpon the finding it by Enquirie.

And now to the particulars of that which the (two next) Iuſt. of P. with the ſheriffe or vnder-ſheriffe muſt doe in execution of this ſtat. of 13.*H.*4.7. Euerie one vpon paine of 100.li.

1 Firſt, they ſhall goe to the place in perſon, if they be able, where the ryot, &c. ſhall be.

Poſſe Comitatus. 2 They ſhall take the power of the County (if need be) *ſc.* they ſhall haue the ayde of all Knights, and other Temporal perſons vnder that degree, that be aboue the age of fifteene yeares, & be able to trauell: for all the kings ſubiects that are in the countie where a ryot &c. ſhal be, being able to trauel, muſt be aiding & aſſiſtant to the Iuſt. of Peace, ſheriffe or vnder-ſheriffe (or other Commiſſioners) when they ſhall be reaſonably warned, to ride or goe with the ſaid Iuſtices, &c. ſheriffe, &c. in aide to reſiſt ſuch ryots, &c. vpon paine of impriſonment, and to make fine and ranſome to the King; which ranſome ſhall be treble ſo much at the leaſt as the fine, *Dyer* 232. 2.H.5.8. P.12.

But it is referred to the diſcretion of theſe Iuſtices how many, or few, they will haue to attend them in this buſines, and in what ſort they ſhall be armed, weaponed, or otherwiſe furniſhed for it. Lambt.301. Cromp.64.

Againe, it is not good for the Iuſtices to aſſemble the power of the County, without certaine information, or knowledge of ſuch ryotous aſſembly; yet if vpon falſe information of a ryot, to bee at ſuch a place, the Iuſtices ſhall cauſe the power of the Countie to bee aſſembled, the Iuſtices ſhall be excuſed by reaſon Lambt.310. Cromp.62.

reaſon of the Information; and if without information, the Iuſtices ſhall thinke that ſuch a riotous aſſembly is made in ſuch a place, and ſhall aſſemble the power of the Countie to goe thither to arreſt the Ryotters, and when they come to the place they finde a Ryot there indeede, they may arreſt and impriſon the offendors, and ſhall be excuſed of the aſſembly made by them: but if they ſhall finde no Ryot there, then ſhall they bee puniſhed for making ſuch an aſſembly of their owne heads, without information.

3 All ſuch offendors as they ſhal find there preſent, they ſhal arreſt them, or cauſe them to be arreſted, & ſhal remoue the force, *ſc.* ſhall commit to priſon all the Ryotters, and take away their weapons. *Arreſt.*

Alſo it ſeemeth, that all ſuch as came in the companie with ſuch Ryotters, or in the companie of anie of them, if that the Iuſtices ſhall finde them there preſent (though they doe nothing, and though they came without any intent of their parts to commit any ryot, yet) they ſhall be all arreſted, impriſoned, & fined. See to this purpoſe in the title *Forcible Entry*.

Marr. Lect. 8. Cromp. 63. Alſo all ſuch Ryotters, as the Iuſtices ſhall meete in their way (ryottouſly arrayed, and comming from the place) they may arreſt and impriſon them, for that they found them vnlawfully aſſembled; but they cannot record any Ryot by them done, for that they ſaw it not, yet they muſt afterwards (as it ſeemeth) Enquire thereof by a Iury, that ſo the offendors may be fined, &c. See more in this title.

But if the Iuſtices doe come and ſee the ryot committed, and after the ſaid Ryotters ſhall eſcape from the Iuſtices at that time, yet the ſaid Iuſtices ſhall record it; but they cannot arreſt them at any other time, except it be preſently after and in freſh ſuit; neyther can they fine the offendors, nor award any Proceſſe againſt them vpon that record which they ſhall make: and yet for that they ſaw the ryot (and thoſe Ryotters that be eſcaped, committing the ryot) they ſhall record it. But that record ſhall not bee kept amongſt the Records of the Peace, but the ſaid Iuſtices ſhall ſend the ſaid Record into the kings Bench, that Proces may from thence be made vpon it, againſt thoſe Ryotters that be eſcaped; where alſo the ſaid offendors ſhall not be admitted to any trauerſe, but muſt of neceſſitie make fine for their ſaid offence. Lambt 312.

Alſo ſuch offendors as the Iuſtices ſaw committing the Ryot, though they ſhall eſcape from the Iuſt. yet the ſaid Iuſtices may after graunt out their Warrants for them, and ſend them to the Gaole, till they ſhall finde ſuertie for the good behauiour. 13. H. 7. Cromp. 196.

But if ſuch offendors ſhall be departed before the comming of the Iuſtices, yet (vpon certaine information of their being there) the ſaid Iuſtices may alſo graunt out their Warrants for them, and may commit them, till they haue found ſuerties for their good behauiour: and yet rather the Iuſtices ſhall doe well to proceed againſt them, by Enquiry, and ſo to fine the offendors for the King, &c. See more in this title. 34.E.3.cap.1. P.Iuſt.18.

Alſo in the execution of this Arreſt of the Ryotters, the ſaid Iuſtices, &c. may iuſtifie the beating, wounding, or killing of any the Ryotters that ſhall reſiſt them, or that will not yeelde themſelues to them. *Vide tit. Homicide, bis.* Lambt.310. Cromp.62, 158.

Alſo the ſaid Iuſtices may take from ſuch Ryotters their Armour, Harneis, and Weapons, and ſhall cauſe the ſame to be pryſed, and to be anſwered to the King as forfeited.

Record. 4 After the Arreſt made, the ſaid Iuſtices (and Sheriffe or vnder-Sheriffe) ſhall make a Record in writing of the ſaid Ryot, (*ſc.* of all that which they ſhal ſee and find done in their preſence againſt the Law) without any other Enquiry. 13.H.4.ca.7. P.1.

But if the Iuſtices of Peace doe not themſelues ſee the Ryot, then they cannot make a Record thereof, but then they muſt Enquire thereof.

If the Iuſtices of Peace, &c. going to ſee a Ryot, another Ryot ſhall happen in their preſence, they may record this, and arreſt and impriſon the offendors.

So if the Ryotters ſhall make a Ryot vpon the Iuſtices (and Sheriffe) that do come to arreſt them for their former Ryot, they may Record that alſo.

So if two Iuſtices of Peace (and the ſheriffe or vnder-ſheriffe) ſhall meet for any other cauſe of ſeruice, or for any priuate buſineſſe (as vpon an arbitrement, or other like matter;) and a Ryot ſhall happen to be done vpon themſelues, or in their ſight, they may Record it, and may arreſt and impriſon the offendors.

And if the Iuſtices of Peace ſhall Record a Ryot, and vpon examination of the matter after, it ſhall appeare to be no Ryot; or that they ſaw it not, or that there was no Ryot at all; yet the parties ſhall be concluded thereby, and haue no remedie (as it ſeemeth,) and therefore the Iuſtices ſhall doe well to be aduiſed what they record. Cromp.63,65.

And againe, for that this Record of the Iuſtices and Sheriffe, is a ſufficient conuiction in it ſelfe againſt the offendors, therefore it ought to be formall and certaine, as well for the time and place, as alſo for the number, weapons, manner, and other circumſtances, becauſe the parties be concluded thereby, and ſhall Lambt.311.

not

not be receiued to trauerſe,or denie it,in any point.

The forme of the Record,*vide tit. Preſidents.*

This Record ought to remaine with one of the ſaid Iuſtices of Peace,and ſhall not be left amongſt the Records of the Seſſions of the peace,it being made out of the Seſſions, and not appointed to be certified thither. Lambt.312,& 365,375.

5 Alſo the ſaid Iuſtices of Peace (and none other Iuſtice of Peace) ſhal commit ſuch offendors to the Gaole, there to remain conuict by their view,teſtimony,and Record (as in caſe of Forcible Entry) vntill they haue payed a fine to the King. *Imprison.* P.1,11. Lambt.312.

Alſo ſuch commitment of the offendors to the Gaole ought to be done preſently. Co.8.120.

And the power of the County ought to be ayding to the Sheriffe or vnder-Sheriffe,for the conueying of them to the Gaole. Lambt.310.

If the Iuſtices of Peace (and ſheriffe or vnderſheriffe) ſhall record the Ryot,and ſhall not (preſently) commit the Ryotters to priſon; or if they ſhall commit them to priſon, and ſhall not record the Ryot, they ſhall forfeit euerie of them 100.li. by the ſtatute 13.*H.*4. for that they haue not done execution of the ſame ſtatute: for by the ſtatutes they ſhall record, and commit; and againe, by the ſame ſtatutes the offendors muſt be as well impriſoned,as fined. Crom.61. P. 5 Forc' 2. 2 Ryotts 1,

6 Alſo the ſaid Iuſtices of P. (and none other) ſhall aſſeſſe the fines vpon the ſaid offendors; for they haue beſt knowledge of the matter,&c.*Co.*8.41.a. which fines by the ſtat. 2.*H.*5.8. ought to be of good value, that out thereof the charges of the ſaid Iuſtices and other officers may be borne,*ſc.* their charges in going, tarrying,and returning,&c. about the ſuppreſſing and Enquirie of ſuch Ryots; of which charges payment ſhall be made by the ſheriffe,by Indenture thereof made betweene him and the ſaid Iuſtices. *Fine.* Lamb.312.5.7 Cromp.161. P.10.

And yet ſuch Fines muſt be reaſonable and iuſt, and *ſecundum quantitatem et qualitatem delicti*, & not vnreaſonable or exceſſiue (for *exceſſus in re qualibet iure reprobatur communi. Co.*11.44.*vide*) and ſo it is commaunded by the ſtatutes 18.*Ed.*3.2.& 34.*Ed.*3.1 *P.Iuſt.*1.*et* 18.

Note alſo,that the fine aſſeſſed in this and ſuch like caſes,muſt not be impoſed vpon all the offendors iointly, but muſt be aſſeſſed vpon euery offendor ſeuerally *Co.*11.43.44.

And the ſaid Iuſtices ſhall cauſe the ſaid fines to be eſtreated into the Eſchequer, that ſo the ſaid fines may be leuied to the Kings Maieſties vſe,and then they are to deliuer the offendors againe,as it ſeemeth: Or elſe the ſaid Iuſt. may record ſuch Ryot by them viewed, and commit the offendors,and after certifie the record

record to the Assises or Sessions, or into the Kings Bench, as in case of a Forcible Entry.

Enquirie. 7 But if the ryot was not committed in the presence of the said Iustices of Peace, or that the offendors be departed before the comming of the said Iustices, then the said Iustices (or two of them at the least) within one moneth after such ryot, assembly, or rout, shall Enquire thereof, by the oathes of a sufficient Iury (to be returned by the Sheriffe:) And the same ryot, &c. being found by such Inquisition, the said Iustices must make a Record in writing of such their Enquiry, and presentment found before them, which Record also is to remaine with one of the said Iustices. *P. R.* 29. 13.H.4.7. P.2.

The forme of such Enquiry or Presentment. See the title, *Presidents.*

This Enquirie shall not be, but where the Ryotters are gone before the comming of the Iustices. Cromp.62.

It is not necessary that one of the Iustices of Peace (which shal make Enquirie of a ryot) be of the *Quorum.*

Although the wordes of the Statute are, the same Iustices, (*sc.* which came to see the ryot) shall Enquire; yet if any other two Iustices of Peace of that Countie shall doe it, that will suffice. Lambt.316.

Also the Iustices of Peace, although they go not to see the ryot, yet they may enquire thereof within the moneth after.

Neyther is it of such necessity, to haue the enquirie within the moneth, that for default thereof the Presentment shall be voyde; for the Iustices of Peace may enquire thereof at any time by force of their Commission: but if it be not within the moneth, then euerie of the two next Iustices are in danger to loose 100. li. for it. And yet if these Iustices doe charge the Iury within the moneth, and doe giue day vnto them for to yeelde their verdict and presentment after the moneth, the Statute is not offended. Lambt.317.

At this Enquirie, the Sheriffe or vnder-Sheriffe ought to bee present with the Iustices of Peace; but the Sheriffe and vnder-Sheriffe be now as ministers (onely) for the returning of the Iury (for this Enquirie,) and be not herein associated with the Iustices as they were before in arresting the Ryotters, and recording their disorder, and therefore they are now to bee spared from being Iudges therein: howbeit by this their presence they may helpe to espie the euill; and besides, it addeth force and credit to the Certificate. Lamb.316,317

If the Iustices doe assemble themselues, the Sheriffe and the Iurie, to make Enquiry of a ryot within the moneth, and the parties beene agreed amongst themselues, so as none will solicite the Enquirie, nor giue in euidence for the king vpon that ryot, yet ought the Lambt.317. Cromp.62. PR.29.

the Iuſtices to proceed *(ex officio)* to make Enquirie of that ryot, ſeeing it may be that ſome of the Iury may haue knowledge of the ryot.

And alſo the Iuſtices ought to make Proclamation, that if any man will giue euidence for the King concerning that ryot, or (generally) will informe the Kings Iuſtices of any ryots, routs, &c. And thereupon ſome other perſons may perhaps come forth to informe them therein.

PR.29. Cromp.62. But if (at the parties requeſt) the Iuſtices ſhall diſmiſſe the Iurie without Enquirie, they are fineable in the Starre-Chamber to the King for the ſame.

And if the Iuſtices ſhall not proceede herein *(ex officio)* without ſome will giue in euidence for the king, *quære*, if they ſhall not be thereby in danger to looſe the 100.li. vpon this Statute, for the reaſons aboueſaid.

And it ſeemeth that the Iuſtices of Peace may iuſtly binde to their good behauiour, the parties that firſt complained to them of this ryot, and haue cauſed them to meete, and now will not proſecute the ſame for the King, but haue agreed it.

Heare, and Determine.

After ſuch Enquirie had, and ryot found, the ſaid Iuſtices haue authoritie (by the ſaid Statute) to heare and determine the ſame according to the Law, *viz.* they may make out Proces againſt the offendors vnder their owne *Teſte*, and may aſſeſſe their fine, and may commit them to priſon till they haue payed their ſaid fine, and may deliuer them after payment of the ſame fine, or vpon ſuerties taken for it (which ſuerties ought to be bound by Recogniſance,) or otherwiſe they may receiue their trauerſe, and thereupon (if the matter will ſo ſerue) to diſcharge and diſmiſſe them. But then the ſaid Iuſtices ſhall do well to ſend ſuch indictment or inquiſition found (and ſuch trauerſe) to the next quarter Seſſions, or into the Kings Bench, and there the trauerſe ſhal be tryed and determined according to Law: *PR.*30.

11.H.4.ca.7. P.2. Lambt.317. Br.Impri. 100. Lambt.317.

But when men are indicted of ryots (or the like) they will vſually yeeld themſelues, and pray to be admitted to their fine (in which caſe the Iuſtices of Peace commonly doe aſſeſſe but ſome ſmall ſumme, or fine, and vpon the paiment thereof do diſcharge the offendor:) and heereby the offendors are not impriſoned, (which would work more feare in ſuch offendors, then ſuch fine) and therfore it is behouefull for the Iuſtices of Peace to vſe good care and diſcretion herein, for by the Statute the offendors are aſwell to be impriſoned, as fined, and it ſeemeth much more ſeruiceable, and more agreeing with the intent of the Law. Beſides, this fine called by * diuers old ſtatutes Ranſome (or *Redemptio* in Latin) ſeemeth by the property of this word to imply, that the offendors

Lambt.559. * Marlebr.cap. 1,2,3,4.

offendors ought firſt to be impriſoned, and then to be ranſomed and deliuered in conſideration of this fine. Lambt.556.

And theſe fines the Iuſt. of Peace are now willed by the ſtatute (2.*H.*5.*cap.*8.) to put in greater ſummes then they were wont to put in ſuch caſes, for the bearing of the charges of the Iuſtices and other officers, &c. See more before in this title.

At the Common Law, a Ryot was puniſhable as a Treſpaſſe, and as well the fine as impriſonment were at the diſcretion of the Iudges: and in the ſame manner the Stat. of 13.*H.*4. enableth the Iuſtices of Peace to puniſh ſuch offendors. But now as well the impriſonment as the fine of ſuch offendors are to be increaſed by the ſaid ſtatute 2.*H.*5.

And therefore where the Iuſtices of Peace are remiſſe herein, (*ſc.* in not ſufficiently puniſhing ſuch offendors by due fine and impriſonment) the Lords in the Starre-Chamber, may (and doe often) aſſeſſe vpon Ryotters for the ſame Ryot (for which the Iuſtices of Peace haue formerly aſſeſſed a Fine in the Countrey) a greater penaltie, if they ſee cauſe; and yet in this caſe the offendors be not twice puniſhed for one offence, but that part of the due puniſhment is inflicted at one time, and part at another. Cromp.63. PR 24.

Certificat. 8 Laſtly, if the the truth, or Ryot cannot be found by the Iuſtices of Peace vpon ſuch Enquirie (being hindered by the peruerſeneſſe of the Iurors, or by the vnlawfull maintenance, countenance, or embracery of others) then within one moneth next after the Enquirie, the ſame Iuſtices & Sheriffe or vnder-Sheriffe, ſhall certifie before the King and his Councel (*ſc.* into the Starre-Chamber, or to the body and Board, of the Priuie Councell, or into the Kings Bench, *Cromp.*63.) the whole fact and circumſtances thereof, with the certainty of the names of the principall offendors, and of the names of ſuch mainteyners and embraceors, with their miſdemeanors, and of the time, place, and other circumſtances, and impediments: yet the not certifying of the maintenance or embracery, is but forfeiture of twenty pound a peece, to euery of the Iuſtices and Sheriffe: the not certifying the reſt, is a forfeiture of 100.li *Cromp.*63.b. *et* 199.b. 13.H.4.7. 19.H.7.13. P.3,15. Lambt.319. P.15.

The end of this Certificat, is but onely to put and force the offendors to anſwer thereto, before the King and his Councell: and though the wordes of the Statute doe make this Certificate to be of the force of a Preſentment of twelue men againſt the offendors; yet ſuch Certificat is no conuiction, but that the offendors may * Trauerſe it, by the words of the ſame ſtat. And ſo this Certificat is onely of the nature of a Declaration, or Indictment at the Common Law, and therefore it ought to comprehend P.3. Lambt.318. * But ſuch Trauerſe and Certificate ſhall be ſent into the Kings Bench, and there be tried. P.3.

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the certainty of the time, place, persons, and other materiall circumstances.

If this Certificat be not made within one moneth after the Enquirie, then is it not according to the statute, and so not good to force the offendors to answer.

If two Iustices of Peace (and the Sheriffe) shall goe to see a ryot, yet any other two Iustices of the County, may make the Enquirie, and then they altogether, or the first two, or the last two (with the Sheriffe or vnder-Sheriffe) may make Certificat thereof within the moneth after that Inquisition taken.

Lambt. 320. Cromp. 63. Where there be seuerall Certificats made, or that the Certificat and the Enquirie doe disagree; then that shalbe preferred which is best for the King.

If there shalbe twentie parties to a ryot, and the Iury shall find but tenne of them guiltie, yet the Iustices may certifie that twenty committed that ryot, and this Certificat of the Iustices shall stand good.

Also it seemeth, if any thing materiall happen to be omitted or left out in the Inquisition, yet it may be supplyed by this Certificate, and it shall stand good.

Lambt. 320. If after the Enquirie, and before the Certificat, the Sheriffe shall dye, or one of the Iustices be put out of the Commission, no Certificat can then be made, by the opinion of Master *Marrow*; but *quære*, if the residue shall not doe well to certifie, in regard of the penaltie.

For the forme of such Certificat: See the title *Presidents*.

2. H. 5. 8. P. 6. Vpon the default of the two next Iustices, and Sheriffe or vnder-Sheriffe, for not executing the said statute of 14. *H.* 4. 7. the partie grieued may haue a Commission to Enquire, as well of the Ryot, as of the defaults of the said Iustices of Peace and Sheriffe. *Commission.*

2. H. 5. 8. P. 9. Also the Lord Chauncellor of England (if he shal haue notice of such a ryot) shall send the Kings Writ to the Iustices and sheriffe, commanding them to execute the said statute of 13. *H.* 4.

And although that such Writ come not to the said Iustices, Sheriffe, or vnder-sheriffe, yet they shall not be excused of the penaltie of 100. li. aforesaid, if they make not execution of the said statute.

2. H. 5. cap. 9. 8. H. 6. cap. 14. Rast. 374. Also if any assemblies of people in great number in manner of insurrection, or other rebellious ryots, shall be done or committed, and that such offendors shall withdraw themselues, to the intent to auoyd the execution of the Law, then vpon Certificate by two Iustices of Peace, and the Sheriffe of that County, by letters

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ters vnder their ſeales, to the Lorde Chauncellor of England of the ſame Ryott: And that the common voyce and fame thereof runneth in the ſaid countie, the Lord Chauncellor may make a *Capias* to the ſaid Sheriffe for the apprehending of ſuch offendors; and after, if need be, a Writ of Proclamation that the ſaid offendors yeeld themſelues in the Kings Bench at a certaine day, vpon paine to be conuict thereof.

Rogues and Vagabonds.

IN this title of Rogues, I haue intermingled certaine Reſolutions of the Iudges, made vpon the ſtatute 39. *Eliz. cap.* 4. for the better vnderſtanding thereof: which Reſolutions you ſhall finde in M. *Lambert.*

One Iuſtice. Any one Iuſt. of P. may appoint all Rogues and Vagabonds (which ſhall be taken begging, wandring, or miſordering themſelues) to be ſtripped naked from the middle vpward, and to be whipped till their body be bloudie. 39. Eliz. 4. P. Vag. 3. 1. Iac. 7.

After ſuch whipping, the ſaid Iuſt. of P. ſhall make them a Teſtimoniall vnder his hand & ſeale, teſtifying their puniſhment, & mentioning the day and place therof, and the place whither they are to goe, and what time they are limitted to paſſe thither, &c.

The forme of ſuch a Teſtimoniall, *vide tit. Licenſes.*

All Rogues and Vagabonds are to be ſent & conueyed forthwith, from Pariſh to Pariſh, by the Officers (*ſc.* the Conſtables of euery of the ſame) the next ſtraight way to the pariſh where they were borne (if it may be knowne by the parties confeſſion or otherwiſe,) or (the place of birth being not known, then) to the pariſh where ſuch perſon laſt dwelt by the ſpace of one yeare, there to put themſelues to labour; or (not being knowne where ſuch perſon was borne, or ſo laſt dwelt, then) to the pariſh thorough which ſuch perſon laſt paſſed without ſuch puniſhment; and then the officers of ſuch Village or Pariſh, are to conuey them to the houſe of correction of that Limit wherein that Village is, or to the common Gaole, there to remaine and be imployed in worke, till they ſhall be placed in ſeruice for one whole yeare, or not being able of bodie, till ſuch perſon ſhal be placed in ſome Almeſhouſe of that Countie. P. Vag 3.

The Rogue whoſe place of birth, or laſt dwelling cannot be knowne, hauing wife and children vnder ſeuen yeares of age, they muſt goe with the husband to the place where they were laſt wilfully ſuffered to paſſe without puniſhment; where the children muſt be relieued by the work of their parents, though the parents be committed to the houſe of correction. Reſol. 6.

Now

39.Eliz.4. P.vag.2. Now all theſe perſons hereunder mentioned, being aboue the age of ſeuen yeres, and offending as hereunder is mentioned, ſhal be adiudged rogues, or at leaſt ſhalbe puniſhed as rogues. *viz.*

1 All perſons aboue the age of ſeuen yeares, going about begging, vpon any pretence or colour whatſoeuer, yea although they be licenced by any ſubiect, except it be in the caſes hereafter mentioned.

2 All idle perſons going about the countrey, either vſing any ſubtil craft, or vnlawfull games, or being Fortune tellers, or luglers, or vſing any other like craftie ſcience.

3 All Proctors, Patent gatherers, or Collectors for priſons or hoſpitals.

1.Iac.7. 4 All Fencers, Bearewards, common Players of Enterludes, and Minſtrels wandring abroad.

1.Iac.7. 5 All Pedlers, pettie Chapmen, Tinkers, and Glaſſe men wandring abroad.

6 All wandring perſons and common laborers, being able in body, vſing loitering, and refuſing to work for reaſonable wages, not hauing liuing otherwiſe then by labour to maintaine themſelues. And yet ſuch perſons as bee of any pariſh, and haue able bodies to worke, and be no wanderers abroad out of the pariſh, though they refuſe to work at ſuch wages as is taxed or commonly giuen in thoſe parts, are not to be ſent to their place of birth, or laſt dwelling, &c. but to the houſe of correction. Reſol.10.

Reſol.15. 7 Poore perſons appointed to aske reliefe in the pariſh where they dwell, by the Ouerſeers thereof, if they ſhall beg in any other ſort then is ſo appointed them; or ſhall begge by the high wayes, though in their owne pariſh. See 39.*Eliz.* & *Lambert*.427.

And yet ſuch perſons are not to be ſent to their place of birth, or out of the towne, except it be to the houſe of correction.

So it ſeemeth of all other poore perſons, begging in the pariſh where they dwel (without the appointment of the ouerſeers) they are to be ſent to the houſe of correction.

8 All perſons wandring, & pretending themſelues to be Egiptians, or wandring in the habit or form of Egip. not being felons.

43.Eliz.3. P.Capt.31. 9 Souldiers or mariners, that ſhall beg, (except as *pag.*99.) or ſhal counterfet any certificat from their General, gouernor, Captaine, Lieutenant, Marſhall, Deputie, or Admirall. But Souldiers and Mariners, in diuers like caſes ſhall incurre the danger of felony. See the title, *Felonies by Statute*.

39.Eliz.4. P.Vag.7. 10 Poore diſeaſed perſons, trauailing to the Bathes, (and being licenſed) yet if they beg; Or if ſuch perſon be not licenced by two Iuſtices; Or ſhall not returne home againe, according as

they are limitted by their ſaid licence; Or ſhall not bee prouided of reliefe, &c. for their trauell; They ſhall bee puniſhed as Rogues.

11 A rogue that hath beene puniſhed according to this Stat. and hath a teſtimoniall, if through his or her default they doe not accompliſh the order appointed by the ſaid Teſtimoniall, then are they to bee whipped againe as rogues, and ſo as often as any default ſhalbe found in them, &c. P. vag. 3.

12 A rogue &c. that ſhall go with a general paſport, *ſc.* which is not directed from pariſh to pariſh, is ſtil to continue a Rogue, and may be puniſhed by whipping againe. Reſol. 13

So alſo may ſuch a rogue, as ſhal carry his owne paſport without a guide; For by the letter of the ſtat. they are to be ſent, *ſc.* conueyed from pariſh to pariſh, by the officers of euery the ſame.

13 Seruants departing out of ſeruice without a teſtimoniall, &c. or which ſhall bee taken with any counterfet or forged teſtimoniall, ſhalbe whipped as vagabonds. 5. Eliz. 4. P. Labor. 8.

14 Perſons infected, or dwelling in houſes infected with the Plague, that contrary to the commandement of any officer, ſhal wilfully goe abroad, and conuerſe in company, ſhalbe puniſhed as vagabonds. 1. Iac. 31. P. plag. 4.

15 So all perſons being able to labour, and thereby to relieue themſelues and their families, that ſhall run away, or threaten to run away, and leaue their charges to the pariſh, &c. 7. Iac. 4.

Children. No childe vnder the age of ſeuen yeares, ſhall bee adiudged a Rogue (within the Statute of 39. *Eliz.* 4.) But it ſeemeth, ſuch children being vagarant, muſt bee ſent to, and placed with the father, or husband of the wife, and if hee bee dead, then with the mother, (where ſhee was borne, or laſt dwelt by the ſpace of one yeare:) And ſuch children once thus ſetled or placed, muſt there remaine, and not bee ſent from thence to their place of birth, though after the parents die, or runne away; or that the ſaid children grow aboue the age of ſeuen yeares, yea, and though the ſaid children after beg and proue vagrant in that town, for there they muſt be ſet to labour. See *Reſol.* 4, 9, 10. 36. Eliz. 4. P. Vag. 2.

Children aboue ſeuen yeares of age, going abroad vagrant, or begging in the countrey, ſhalbe puniſhed as Rogues, and ſent to to their place of birth &c. 39. Eliz. 4. Reſol. 4.

Wife. The wife being a vagrant Rogue, muſt bee ſent to her huſband, though he be but ſeruant in another towne. Reſol. 5.

If the husband or wife haue a houſe (though as an Inmate) and either of them rogue about, they are to be ſent to the town where that houſe is. Reſol. 3.

No

Resol. 9. No man is to be put out of the towne where hee dwelleth, nor to bee sent to their place of birth, or last habitation, but onely a vagrant Rogue, *sc.* such as wander abroad in the Countrey, and not such as are vagrant, or doe begge, in the same towne where they dwell.

Such as their estates of their houses bee expired, and seruants whose time of seruice is ended, they shall not bee put out of the townes where they last dwelt, or serued, &c. *Vide tit. Poore.*

39. Eliz. 4. P. Vag. 14. The Iustice of peace (dwelling in or neere the place where any Seafairing man suffering shipwracke, shall land) may make a Testimoniall vnder his hand to such person (not hauing wherewith to relieue himselfe in his trauell homewards) setting downe in such testimoniall, the place, and time, where and when he landed, and the place of his birth or dwelling vnto which he is to passe, limiting him therin a conuenient time for his passage, which person (without the danger of this law) in his direct passage, and within his time limitted, may aske and receiue necessary reliefe. *Who may begge.* *Persons suffering shipwracke.*

29. Eliz. 17. P. Mar. 9. The Iust. of peace in or neere the place where any poore, idle and wandring souldier or mariner (comming from the seas, or from beyond the seas) doth land, ought vpon request, to giue him a testimoniall vnder his hand, expressing therein the time and place of such his landing, with the place of his dwelling & birth to which he is to passe, and to limit him a conuenient time for his passage thither; and such person pursuing such licence, may aske and receiue necessary reliefe, without the danger of law. *Soldiers &c. from sea.*

But now *quære* of these persons, and see *infra.*

39. Eliz. 4. P. Vag. 3. Also one Iustice of peace, (or the Constable, with the Minister, and one other of the parish) after the whipping of a Rogue according to this statute, may make the said rogue a testimonial vnder their hand and seale, for the conueying of such rogue according to this Stat. And such rogue pursuing such testimonial, may (as it seemeth) by the direction of the officers of euery parish where he commeth, aske and receiue necessary reliefe; yet *quære*, for seeing they are to bee conueied from parish to parish by the officers (*sc.* the constables of the same) it seemeth more requisite, that such rogue be relieued according to his need, by the constable of euery such parish (yet at the towne charge) and not to bee suffered to goe begging through the towne. *Rogues whipped.*

43. Eliz. 3. P. Capt. 20. And as for the souldier or mariner (especially such as are sick, hurt, or maimed) they now are vsually, or may bee, relieued with money by the Treasurers of euery Countie where they come, *viz.* with such conuenient summes, as may carry them to the next Countie, and this is by a later lawe, And therefore now it may seeme vnfit, that either the Constable should relieue them,

or ſuffer them to begge or aſke reliefe in their townes, for ſo the Countrey ſhall bee double charged towards their reliefe, *ſc.* in paying to the Treaſurer towards their reliefe, and againe in giuing them at home.

So that I doe not finde, that any one or more Iuſtices of peace may or can in any caſe licence any man to begge, or aſke reliefe at all, but onely may make a Teſtimoniall, or Licence in the three former caſes, and ſome fewe other, to paſſe from place to place; And yet in thoſe three caſes onely, the Law tollerateth them to aſke and receiue neceſſarie reliefe, as aforeſaid. For I obſerued before, that poore diſeaſed perſons trauelling to the Baths, (though licenced by two Iuſtices of peace) yet they might not begge, and beſides muſt be prouided of maintenance for their trauell. See more in this title before. 39. Eliz. 4.

I obſerue further, that (by the ſtatute 39. *Eliz. cap.* 3. though it be now expired) no perſon whatſoeuer, might goe wandring abroad and begge, in any place whereſoeuer by licence or without vpon paine to be taken as a Rogue.

And therefore *quære*, of ſuch Briefes and Licences as lately haue vſually come from the Lord Maior of London, licenſing poore perſons to trauell, and to aſke or begge reliefe in their trauell, and by generall paſports, not directing them from pariſh to pariſh. See more in this title after. Reſol. 13.

And yet any one Iuſtice of peace may licence laborers in hay and harueſt time, to paſſe from one countrey to another to work, but not to wander, or begge: ſee the title, *Labourers*. 5. Eliz. 4.

And ſo any two Iuſt. of peace, may make a teſtimoniall to ſeruingmen, (or other * ſeruants, as it ſeemeth) departing from their maſters; but ſuch perſons vnder colour thereof may not wander vp and downe idly, nor begge: ſee the title, *Labourers*. See 5. Eliz. 4. P. Labor. 7.

Two Iuſtices. Any two Iuſt. of P. of the limit where any incorrigible Rogue ſhall bee taken (the one being of the *Quorum*) may commit ſuch rogue to the houſe of correction, or to the gaole, there to remaine vntil the next Seſſions of the peace, and there to be dealt withall according to the ſtatute, 1. *Ia. cap.* 7. 39. Eliz. 4. P. Vag. 4. 1. Iac. 7.

Now theſe incorrigible Rogues be ſuch as ſhall either appeare to be dangerous to the inferiour ſort of people; or ſuch as wil not be reformed of their roguiſh kinde of life. P. Vag. 4. 39. El. 4.

Of the firſt ſort are ſuch as ſhall offer any violence, or ſhall vſe any threatning ſpeeches, or other like miſdemeanors towards any perſon. Of the other ſort ſeem theſe which follow, & ſuch like.

1. Such as hauing had puniſhment, and therupon ſent to their place of birth, &c. and there ſetled according to law, ſhall notwithſtanding fall to their roguiſh life againe.

Resol. 1. 2 A Rogue that affirmeth that he was borne in such a towne, in such a Countie, and is sent thither, if he were not borne there in trueth, he is to be said an incorrigible Rogue, and is to bee sent thence (by two such Iustices as aforesaid) to the house of Correction in that Countie, and if there bee none, then to the gaole, vntill the next Sessions, there to bee dealt withall according to the statute.

Resol. 2. 3 The same course is to be obserued (if it appeare not where hee was borne) if hee vntruely affirme that hee was last dwelling in such a Towne and Countie, by the space of a yeare, and was not.

7. Iac. 4. All persons being able to labour, and thereby to releeue themselues and their families, that shall runne away out of their parishes, and leaue their families or children, to the parish, shalbe deemed and punished as incorrigible Rogues.

7. Iac. 4. Also all persons beeing able to labour, as aforesaid, that shall threaten to runne away, and leaue their families, as aforesaid, it being prooued by two sufficient witnesses vpon oath, before any two Iust. of peace of that diuision, shalbe sent by the said Iustices to the house of correction there to be dealt withal as a sturdy and wandring rogue, &c. vnlesse such person shall put in sufficient sureties for the discharge of the parish.

39. Eliz. 4. P. vag. 5. All such persons as shall in any wise disturbe, or hinder the execution of the law, made 39. *Elizab. c.* 4. or any part thereof, concerning the punishment, and conueying of rogues; Or shal make rescouse against any officer or person authorized for the execution of this statute, shall forfeit for euery such offence fiue pound, and shalbe bound to the good behauiour; And any two Iustices of peace may binde such offenders to the good behauiour, and may also by warrant vnder their hands & seales, cause to be leuied by distresse and sale of the offenders goods, the said summe of of 5. li. vpon the confession of the offendors, or vpon the testimony of two sufficient witnesses before the said Iust. of such offence.

P. vag. 5. 12.

Within the compasse of which words and statute, seeme to be these offendors and offences which follow.

Resol. 13. 1 To send rogues by a generall pasport, without conueying them from parish to parish, is a let to the conueying of rogues according to the stat. and so a forfeit of 5. li. vpon them that shal so send them (and they are to be bound to the good behauiour.)

Resol. 14. 2 Note that all rogues are to be conueied to their place of birth &c. by the Constables of euery parish (*sc.* from Constable to constable, the next streight way) And therefore if the Officer, (*sc.* the Constable) of any parish will not receiue a Rogue, to conuey him to the place where hee was borne (or dwelt) this is a

forfeiture of fiue pound in ſuch officer, that ſhall not receiue the party to conuey him, or her, and hee is to be bound as aforeſaid, to his good behauiour.

3 So it ſeemeth, if the Conſtable or other perſon which ſhall conuey a Roague towards his place of birth &c. if hee ſhall not deliuer him to the Conſtable of the next pariſh.

4 If any be ſent to a towne whereto he ought to be ſent, and is refuſed, being a ſturdy, or an impotent Rogue, the perſons ſo refuſing, ſhall forfeit fiue pound, and may bee bound to the good Behauiour. Reſol. 12.

5 Note that he that is ſo to be ſent, is to be deliuered or offered to the Churchwardens and ouerſeers, and if they ſhal refuſe him, they ſhall forfeit fiue pound, as aforeſaid. Reſol. 12.

Alſo any two Iuſtices of peace (by warrant vnder their hands and ſeales) may cauſe to be leuied by diſtreſſe and ſale of the offendors goods, all fines and forfeitures appointed, or to grow by this act of 39. *Eliz.* 4. or by the ſtatute of 1. *Iac. cap.* 7. by conuiction of any perſon, for any offence heereunder mentioned: But ſuch conuiction muſt bee, either by confeſſion of the offendor, or by the teſtimony of two ſufficient witneſſes before the ſaid Iuſt. as namely: 39 Eliz. 4 P. Vag. 11. 1. Iac. 7.

1 The Miniſter which ſhall not keepe a Regiſter booke, and therein enter the ſubſtance of euery teſtimoniall made for the conueying of Rogues (puniſhed in his pariſh) ſhall forfeit for euery default fiue ſhillings. P. Vag. 3.

2 The Conſtable which ſhall not doe his beſt indeauour for the apprehending, puniſhing, & conueying of all Rogues which ſhall be found in their pariſh, ſhall forfeit for euery ſuch default, tenne ſhillings. 39 Eliz. 4

3 The Conſtable which ſhal not cauſe to be puniſhed, and to be conueyed (according to the ſtat. of 39. *El.* 4.) all ſuch rogues, as ſhalbe brought or ſent to him, by any of his neighbours, ſhall forfeit for euery ſuch default twentie ſhillings. 1. Iac. 7. P. Vag 5.

Note that the Conſtable is to execute the ſaid puniſhment, of whipping of rogues, either himſelfe, or by ſome other by his procurement: ſee to the like purpoſe in the title, *Treſpaſſe*.

4 Euery perſon ſhall cauſe to bee apprehended ſuch Rogues as hee ſhall ſee or know to reſort to his houſe to begge or receiue any almes, and him or them ſhall carrie or cauſe to bee carried to the next Conſtable, or elſe ſhall forfeite for euery ſuch default tenne ſhillings. 1. Iac. 7 P. 5.

5 Euery perſon that ſhall willingly bring or conuey in any veſſell, out of Ireland, or the Ile of Man, into this Realme, any Rogue, or any ſuch as ſhall bee like to liue by begging, &c. ſhall forfeit 39. Eliz. 4.

forfeit for euery ſuch perſon ſo brought ouer xx.s.

39.El.4. 1.Ia.7. All (or the moſt part of) which fines and forfeitures appointed, or to grow by theſe acts (39.*El.*4. & 1.*Iac.*7.) are to bee imploied to the maintenance of the houſes of correction, or reliefe of the poore, where the offence ſhall be committed, at the diſcretion of any two Iuſtices of peace (as it ſeemeth) of the ſame limit.

39.El.4. P. { Iuſt.74. Vag.11. Note that any two Iuſtices of peace (whereof one to be of the *Quorum*) haue power to heare and determine all cauſes that ſhall grow or come in queſtion by reaſon of the ſtatute of rogues. 39. *Eliz.* 4.

39.El.4. P.Vag.7. Any two Iuſtices of peace may licence diſeaſed perſons to trauell to bath or Buxton, for the eaſe of their griefes; ſo as they be prouided of neceſſary maintenance for the time of all their trauell &c. but they may not beg. See hereof more in this title before.

7.Iac.4. The Iuſtices of peace (or the more part of them) within their diuiſions, twice in euery yeare at the leaſt, ſhall meete for the execution of the ſtatute 7.*Ia.*4. againſt rogues and vagabonds: And ſome foure or fiue daies before their meeting, they ſhall by their warrants commaund the Conſtables of euery hundred, towne, and pariſh &c. within their ſeuerall diuiſions, to make a generall priuie ſearch in one night for the apprehending of all rogues and wandring and idle perſons, to bee brought before them at their ſaide meeting, there to bee examined of their idle life, and there to be puniſhed: or otherwiſe by warrant of ſuch Iuſtices to bee ſent to the houſe of correction within the ſaid countie: which ſending to the houſe of correction ſhall bee by the ſayde Conſtables who apprehended them (yet at the charge of the Hundred.) But by whom they ſhall be puniſhed or whipped, *quare*, it ſeemeth by the officers of the towne where the Iuſtices ſo ſit or meete.

7.Iac.4. Alſo at the ſame meeting, the Conſtables of euery Hundred and Pariſh are to appeare before the ſaid Iuſtices, and there ſhall giue an account (vpon oath) in writing, and vnder the hand of the miniſter of euery pariſh, what rogues they haue apprehended aſwell in the ſame ſearch, as alſo betweene euery ſuch their meetings, and how many they haue puniſhed, or conueied to the houſe of correction.

7.Iac.4. Alſo the ſaid Iuſtices at their ſaid meetings, may aſſeſſe reaſonable fines (being not aboue fortie ſhillings) vpon any the Conſtables, aſwell for their neglecting to performe this ſeruice, *ſcil.* in not appearing, or giuing accompt, as aforeſaid, as alſo for their neglecting the ſafe conueying of Rogues, and other idle and diſorderly perſons, ſent to the houſe of correction by warrant from the

the ſaid Iuſtices of peace, which conuey of ſuch perſons to the houſe of correction, muſt bee at the charge of the hundred, as is aforeſaid.

Alſo the ſaid Iuſtices at their ſaid meetings, may deliuer ſuch perſons as they haue formerly ſent to the houſe of correction, from their meetings. 7 Iac. 4.

Robberie.

One Iuſtice. After a Robbery committed, the party robbed ſhall not haue his action vpon the ſtatute againſt the hundred, except hee ſhall with all ſpeed conuenient, giue notice of the ſaid robbery, to ſome inhabitant, neere to the place, where ſuch robberie was committed: And alſo except he ſhall commence his ſuit or action within one yeare next after ſuch robberie committed: And alſo except he ſhall firſt be examined vpon his oath (within 20. daies next before ſuch action brought) by ſome one Iuſtice of peace (of the county where the robberie was committed) dwelling within, or neere to the ſaid hundred, where the robberie was done, whether he doth know the parties that committed the ſaid robberie, or any of them: And if he knoweth any of them; then alſo (before ſuch action brought) he ſhall bee bound before the ſame Iuſtice by ſufficient recogniſance, to proſecute effectually the ſaid offendors, by indictment, or otherwiſe according to the due courſe of law. 27 El. 13. P. Huy and Cry 8, 10

After a robberie committed, the whole hundred muſt anſwere the loſſe, if the robbers be not taken within forty daies: And yet for that the party robbed hath his recouery and execution againſt ſome one or few perſons of that hundred: therefore for a contribution to be yeelded from the reſidue of the ſaid hundred, vpon complaint made by the parties againſt whom ſuch recouerie and execution is had: Any two Iuſtices of peace (the one being of the *Quorum*) being of the ſame county, and inhabiting in or neere the ſame hundred where ſuch execution ſhall be had, may aſſeſſe according to their diſcretions, proportionably all the townes and pariſhes &c. Aſwell of the ſame Hundred (where the ſaid robberie was committed) as alſo of the liberties within the ſaid hundred towards an equall contribution to be had for the relieſe of the parties charged, The which money the Conſtables of euery towne ſhall leuie, and deliuer ouer to the ſame Iuſtices, or to one of them) within ten daies after collection:) And which the ſaid Iuſtices ſhall deliuer ouer (vpon requeſt) to the parties charged, to whoſe vſe the ſame was collected. 27 El. 13. P. Huy and Cry 4, 5.

Two Iuſtices.

The like taxation, aſſeſſement, leuying and paiement, ſhall bee had

had and made for a contribution within euery hundred, where there was any negligence, fault, or defect of purſuite, and freſh ſuit after Huy and Cry, *videlicet*, if vpon ſuit any recouery and execution of any money, or any dammages ſhall be had againſt ſome one or few perſons of that hundred, where ſuch default was (towards the eaſe of the Hundred, where the Robbery was done) vpon complaint made by the parties ſo charged, to any two ſuch Iuſtices of peace: The ſaid Iuſtices may make the like aſſeſſement &c. towards the reliefe of the ſayd parties ſo charged.

27.El.13. P.Huy and cry 6.

Co.7.6. Note that if any man be robbed in his houſe, the hundred ſhal not be charged therewith, whether it were done in the day, or in the night.

Co.ibidem. Alſo a Robbery done in the night, ſhall not charge the hundred: but yet if it be in the day time, or by day light, though it be before Sunne riſing, or after the Sunne ſetting, the hundred ſhall anſwere for it.

27.El.13. P.Huy &c.7. If vpon purſuit any of the offendours bee apprehended, the hundred ſhal not be charged (but purſuit without apprehending the robbers is no excuſe.)

Cromp.179. If the partie that was robbed ſhall himſelfe take any of the theeues, after Huy and Crie made, this ſhall excuſe the Hundred.

Dyer 370. PR.155. It ſeemeth by my Lord *Dyer ann.22. Eliz.* that the ſtatute is ſatisfied, if the names of the offendors be deſcryed; ſo that they may be indicted and outlawed, *quære inde* for the words of the ſtatute of 13.*Ed.*1.are, that the countrie muſt anſwere for the bodies of ſuch offendors.

Nota, the party robbed, muſt bring his action, within twentie daies next after his examination taken before the Iuſtices of peace.

Alſo the Iuſtices of peace muſt be abiding within the countie, at the time of ſuch examination taken by him as it ſeemeth. See the title Iuſtices of peace.

Sacraments.

1.Ed.6.1. P.Iuſt.8. IT ſeemeth that three Iuſtices of the peace (one of them being of the *Quorum*) may out of the Seſſions, take information and accuſation (by the oathes of two honeſt perſons) againſt ſuch as ſhall depraue the Sacrament of the body and bloud of our Lord and Sauiour Ieſus Chriſt, againſt the ſtatute &c. *Three Iuſt.*

&c. And may bind the accuſers (and ſuch other witneſſes as were by) by recogniſance, to giue in euidence at the day of triall: But M^r. *Lambert* maketh a *quare* hereof. Lamb. 352.

Sewers.

Six Iuſtices. SIx Iuſtices of peace (two being of the *Quorum*) within their limits, may execute the Lawes and Ordinances of the Commiſſioners of Sewers, for one yeare after the expiration of any ſuch Commiſſion, except a new commiſſion be publiſhed in the meane time. 13. El. 9. P. 46.

Note that the proceedings of the Commiſſioners of Sewers, ought to be limited and bounded with the rules of law, and reaſon, And according to the auncient ſtatutes and ordinances. See the title *Iuſt. of peace*. Co. 5. 100. & 10. 138. 140.

Theſe Commiſſioners cannot make any new great riuer, neither can they make new inuentions (as artificiall mils, to caſt out the waters, or ſuch like.) But ſuch new riuers, and new inuentions (if they be for the publique good) ought to bee made by parliament. And yet the making new of an ancient banke or ſewer in a place more fit, and with ſome little alteration and diſtance, and vpon neceſſitie, ſeemeth to be warrantable. Co. 10. 141.

Theſe Commiſſioners cannot caſt downe any mils, cauſies, or ſtankes, &c. erected before the time of *Ed.* 1. but only may cauſe them to be abated, if they bee raiſed aboue their auncient hights. *Co.* 10. 138.

Theſe Commiſſioners ought to taxe none towards theſe reparations &c. but ſuch as haue preiudice by the ſaid nuſances or defaults, And which haue benefit by the amending or remouing of them. *Co.* 10. 142.

Alſo theſe Commiſſioners ought to taxe all that be in danger to be indamaged by the not repayring &c. (and that according to their land &c.) And not to taxe him only whoſe grounds lye next adioining to the riuer &c. for *Qui ſentit comodum, ſentire debet & onus*. Co. 5. 67. 100. 9. 124. a. 10. 143.

Note that in all caſes of taxing or rating by theſe Commiſſioners, it ought to be proportionable, and according to the qualitie, and yearely value (of their lands, tenements, rents, commons, and fiſhings) and not according to the quantitie, or content thereof. Co. 5. 67. 100. 9. 124. 10. 139. Co. 10. 139.

Againe if the owner of any land bee bound by preſcription, to repaire the banke of a riuer, wall, or ſewer &c. yet if he be not able to repaire it: or that there be other inculpable neceſſitie: or that there was no default in the party, but that the bankes or wall &c.

&c. are broken, or ouerflowne by tempeſt, or vnuſuall ouerflowing of waters, or the like (which bee the act and handy worke of God, and which no prouidence or induſtrie of him that is bound to the reparations, could preuent) In theſe cauſes the Commiſſioners ought not to charge him onely (with the whole) but ought to charge and taxe all ſuch as haue any lands (or other profits) there, in danger, or ſubiect to loſſe.

Co. 10. 143. Alſo theſe taxations ought to be perticular, *ſcil.* vpon euery ſeuerall owner, or occupyer of lands, tenements, rents, commons, and fiſhings &c. And not to be a generall ſumme ingroſſe, vpon a whole towne. See more here, after.

Sherifes.

1. H. 7. 15. P. 16. 18. 20. THe *Cuſtos Rotulorum*, or the eldeſt of the *Quorum* (in his abſence) ought at the generall Seſſions after Michaelmas, to appoint two Iuſtices of the peace (the one being of the *Quorum*) to haue the ouerſight and controlement of the ſherife, vndeſherife and other their officers and deputies, and of their bookes and amerciaments in their countie Courts: And either of theſe two Iuſtices of peace (or any other Iuſtice of peace, as [a] ſome thinke) vpon complaint of the party grieued, may examine the ſherife, vnderſherife, ſhire-clerke, and plaintifes, concerning the taking or entring of plaints in their ſaid county courts, & bookes againſt the ſtatute. *viz.* *One Iuſtice.*

[a] { Lam. 203. P. 16.

1 Firſt if any plaints ſhall bee entred in their bookes, in any mans name, vnleſſe the party plaintife be either preſent in court in perſon, or by a ſufficient and knowne Atturney or deputie.

2 If that the plaintife find not pledges to purſue his ſayde plaint, (*ſcilicet*, ſuch perſons as are knowne there in that countie.

3 If they ſhall enter more then one plaint, for one treſpas, or contract.

4 If they ſhall enter, or cauſe to be entred any moe plaints, then the pl. ſuppoſeth hee hath cauſe of action for, againſt the def.

And if the ſaid Iuſtices of Iuſtice of peace vpon his or their examination, ſhal find any ſuch default in the ſaid ſherife, vnderſherife, or clerke: that ſhal ſtand for a ſufficient conuiction without any further inquirie and examination; and they ſhall forfeit vpon the ſame examination fortie ſhillings to the King and Informer, for euery default, the ſame to be recouered in the Exchequer: And the ſame Iuſtice ſhal certifie his ſaid examination into the Exchequer within a quarter of a yeare, vpon paine of 40. s.

Alſo

Alſo the ſaid Iuſtice of peace may examine the defaults of the bailife of the hundred, for not warning of the defendants (in ſuch plaintes) to appeare, according to his precepts (from the Sherife, or vnderſherife) And if vpon examination, the Iuſtice ſhall find any default in ſuch bailife, in not warning the def. to appeare, or otherwiſe in executing their ſaid office, that ſhall ſtand for a ſufficient conuiction: and the ſaid bailife thereupon ſhall forfeit for euery ſuch default fortie ſhillings, the ſame examinations to bee certified into the Exchequer as aforeſaid. 11 H.7.15. P.17.

Two Iuſtices. Sherifes &c. ſhall make no eſtreats to leuie their ſayde ſhire amerciaments, vntill the ſayd two Iuſtices haue had the view and ouerſight of their bookes: And their ſayd eſtreats ſhall bee made by Indentures betweene the ſaide Iuſtices, and the ſayde ſherife and vnderſherife, and ſealed with their ſeales, and the one part to remaine with the ſaid Iuſtices, and the other part with the ſherife. 11.H.7.15. P.18.

The collectors of the ſayd amerciaments ſhall bee ſworne by the ſaid Iuſtices, that they ſhall not take more money then is forfetted, and contained in their ſaid eſtreats, ſealed by the Iuſtices as aforeſaid. P.19.

One Iuſtice. Alſo the ſaid Iuſtices of peace, or any one of them, may examine the defaults of the ſaid collectors, bailifes, and other gatherers of the ſherifes amerciaments; whether they haue taken or gathered any more money then is forfeited and contained in their eſtreats (ſealed with the ſeales of two Iuſtices of peace as aforeſaid.) And if vpon examination the Iuſtices, or Iuſtice ſhall find any ſuch default, That alſo without further enquirie ſhall ſtand for a ſufficient conuiction: And the ſaid Collectors, Bayliſes, or other gatherers of ſuch amerciaments, thereupon ſhall forfeit for euerie default fortie ſhillings, The ſaide examination alſo (whether it bee by one or two Iuſtices) is to be certified into the Exchequer as aforeſaid. P.19.

Two Iuſtices. Alſo the ſaid Iuſtices of peace vpon ſuggeſtion of information of the partie grieued, ſhall make like proces, as in an action of treſpas againſt the ſaid ſherife, vnderſherife, and other there officers offending in any the perticulars as aforeſaid, for to appeare before them to anſwere the ſaid ſuggeſtion or information See what the proces is, in the title *Proces*. 11.H.7.15. P.10. Lambt. 349.

The *Cuſtos Rotulorum*, or any two Iuſtices of the peace (the one being of the *Quorum*) may take the oathes of the Vnderſherifes of their countie, his bayliffes, deputies, clerkes, and other officers, before they ſhall exerciſe their ſaid offices, *ſcilicet*. 27 El. 12. P.32.33.

the

The oath for the Supremacie.
The oath for the true exerciſing of their office.

Cromp.67.b. See the forme of this oath ſtat.27.*Eliz.P.*32. But ſpeciall Bailifes made for the ſeruing of proces are not to be ſworne, by this ſtatute.

Souldier.

2.Ed.6.2. P. Capi 12. Iuſt.84. EVery Iuſtice of peace of the county where any Souldier, which hath ſerued the king in his warres, ſhall bee found, which hath giuen, purloined, or put away &c. any horſe or harneis (wherewith he was ſet forth, or which was after appointed to him) vpon complaint and due proofe of the offence to bee made (by the owner, his executors, or adminiſtrators) to any ſuch Iuſtice, ſhall by the ſaid Iuſtice bee committed to ward, there to remaine without baile, vntill hee hath ſatisfied the party grieued, for ſuch horſe, or harneis &c. vnleſſe he do bring with him before the ſame Iuſtice ſufficient teſtimony from his captaine &c. in writing vnder their ſeale, teſtifying that the ſaid horſe or harneys &c. was loſt in the kings ſeruice againſt the will of that ſouldier, or was taken by his captaine &c. from him, and appointed to ſome other to ſerue withall (except the ſame ſouldier were impriſoned for the ſame offence before, by his Lieutenant or Captaine &c. and made reſtitution.) *One Iuſtice.*

39.El.4.17. The next Iuſtice of peace to the place of landing of any poore ſouldier, mariner, or ſeafaring man, ſuffering ſhipwracke, may make them a licence to paſſe to the place whither they are to repaire &c. See heere in the title *Rogues*.

43.El.3. P.Capi 17. In default of the pariſhioners, churchwardens and conſtables (that ſhall not aſſeſſe taxe impoſed vpon the pariſhioners, by the Iuſtices at their Eaſter Seſſions, towards the relieſe of diſabled ſouldiers and mariners) Any Iuſt. of peace dwelling in that pariſh, or (if none dwell there) in the parts next adioyning, may aſſeſſe the ſame; and may alſo in the default of the churchwardens and conſtables, leuie the ſame by diſtreſſe and ſale of the goods of the partie ſo refuſing or neglecting, rendring to the partie the ouerplus &c.

39.El.17. P.Mar.8. If any poore ſouldier or mariner, comming from, or beyond, the ſeas, ſhall repaire to his place of birth &c. and cannot there get worke, Then vpon his complaint, any two Iuſtices of peace neere the ſaid place, ſhall take order (by their diſcretion) to ſet him to worke, and for want of worke, the ſaid Iuſtices ſhall taxe the whole hundred (by their diſcretion) for his relieſe, till ſufficient worke may be had. *Two Iuſtices.*

Stocke of the ſhire.

One Iuſtice.

To what vſes they muſt bee imployed.

IN default of the Pariſhioners, Churchwardens, and Conſtables (that ſhall not aſſeſſe the taxe impoſed vpon the pariſhioners, by the Iuſtices at their Eaſter Seſſions, towards the reliefe of the priſoners in the Kings Bench, Marſhalſey, and Hoſpitals, and other loſſes by fire, water, and other caſualties, and reliefe of the poore within that Countie.) Any Iuſtice of peace dwelling in that pariſh, or (if none dwell there) in the parts next adioyning, may aſſeſſe the ſame: And the ſame Iuſtice, or any other Iuſtice of peace of that limit (in the default of the Churchwardens, and Conſtables) may leuie the ſame by diſtreſſe, and ſale of the goods of the partie, refuſing or neglecting to pay his part thereof, rendring to the partie the ouerplus: And in default of ſuch diſtreſſe, any Iuſtice of peace of that limit may commit ſuch perſon to priſon, there to remaine without baile, till he hath payd the ſame. 43 El. 2. P. Poore 13.

Now in theſe, and other rates and taxations, you ſhall obſerue theſe things:

1 Firſt, that the moſt reaſonable rating of land, is by the yearely value, and qualitie thereof, and not by the quantitie or content. Co. 9. 124. See here 106.

2 He that occupyeth (in his owne hands) lands lying in ſeuerall pariſhes, ſhall bee charged in euery pariſh proportionably for his lands there. Co. 5. 67.

3 The Fermour ſhall bee rated for the lands, and not the leſſor. Co. 5. 67.

4 A man ſhall not bee rated or taxed for his ferme rents, in aſmuch as the fermor or occupyer of the land is chargeable for the ſame land. So where my fermor is aſſeſſed by his goods, I ought not to be aſſeſſed for my rent of the ſame ferm. *Br. Quinz.* 2. 4. Co. ibid.

5 By goods in moſt caſes a man may bee rated. (as well as by landes) But not both by goods and landes, as it ſeemeth.

Alſo for goods, a man ſhall bee charged onely in that towne where the goods bee at the time of the aſſeſſement, *Br. Quinz.* 6.

And if a man be aſſeſſed for his goods in D. when as he hath no goods there, and bee diſtrained for ſuch aſſeſſement, hee may haue an action of treſpas. *B. Quinz.* 3. & 4.

The Conſtables (or other Officers) and greater part of the Pariſhioners (vpon a generall warning giuen in the Church) may

may aſſemble and make ſuch taxations by law. See *Coke* 5. 67.

The like may bee done by the Churchwardens, and the greater part of the pariſhioners, for church charges.

And if the greater part of the pariſhioners will not meete vpon ſuch warning giuen, it ſeemeth, the officers, and ſuch of the pariſhioners as will meete, may make ſuch taxations.

Subſidie.

IF any perſon that ought to be ſet to the Subſidie, do by his craft or couin eſcape the taxation, and that be proued before two Iuſtices of peace of that countie; then ſhall hee be charged at the double value of ſo much as he ought to haue beene taxed at, and ſhall further be puniſhed at the diſcretions of the ſaid Iuſtices. 7. *Ia. Reg.* and diuerſe former acts of ſubſidies.

Tranſportation.

1. & 2. Ph. & M. P. Iuſt. 27. IT ſhould ſeeme by the words of the ſtatute, that any one Iuſtice of peace may inquire of, heare, and determine (as alſo may examine the mariners, and euery other perſon) of all and ſingular the offendours againſt the act 1. & 2. *Phil. & Mar.* prouided for the reſtraining of carrying corne, beere, butter, cheeſe, herring, and wood, beyond the ſea, but *quære*. *One Iuſtice.*

Yet not that euery man may tranſport corne, yt being at theſe priſes following, except it be prohibited by proclamation.

1. Iac. 25. P. Corne 6.

Wheate	} the quarter	}	26. s. 8. d.
Rie, and Peaſe			15. s.
Barley, and Malt			14. s.

3. Iac. 27. Alſo euery man may tranſport any beere, when the price of a quarter of Malt exceeds not the ſumme of ſixteene ſhillings. 3. *Iac. cap.* 11.

And it is to be holden to be great pollicie, to prouide that corn bee alwaies of a reaſonable and competent value, it being an aſſured meanes to increaſe and aduance husbandrie and tillage (the auncienteſt of all trades and profeſſions, and commaunded by *God* to *Adam Gen.* 3. 23. One of the greateſt commo-

dities of this realme, and much reſpected and fauoured aſwell by the common law, as alſo by the common aſſent of the King, the Lords ſpirituall and temporall, and by all the commons in many Parliaments. *Co.* 4. 39.

Treſpaſſes.

ALl and euery lewde and meane perſons, which ſhall vnlawfully cut, or take away any corne growing: or rob any orchards, or gardens: or breake or cut any hedge, pale, raile, or fence: or digge, pull vp, or take away any fruit trees: or ſhall cut or ſpoyle any woods, vnderwoods, pooles, or trees ſtanding (not being felony) And their procurers, or receiuers knowing the ſame, being thereof conuict, by confeſſion of the party, or by the teſtimony of one ſufficient witneſſe vpon oath, before any one Iuſtice of peace (whereby the offence ſhall be committed, or the offendour apprehended) ſhall for the firſt fault, giue the party wronged ſuch recompence, and within ſuch time, as by any one Iuſtice of peace (of the county where ſuch offence ſhall be done) ſhall be appointed: And if ſuch offendour ſhall be thought (in the diſcretion of the ſaid Iuſtice) not able, or do not make ſatiſfaction accordingly: Then the ſaid Iuſtice ſhall commit the ſaid offendor to ſome Conſtable, or other inferiour officer (where the offence ſhalbe committed, or the offendor apprehended) to be whipped. 4. El. 7. P. 1.

One Iuſtice.

Alſo, it ſeemeth that for the ſecond fault, and euery other offence, whereof ſuch offendour ſhall bee after conuicted in forme aforeſayde, ſuch offendour ſhall bee whipped, as aforeſaid. *Ibid.*

If any Conſtable, or inferiour Officer, do refuſe, or doe not, at the commaundement of the Iuſtice (by himſelfe, or ſome other) execute vpon the offendour the puniſhment aforeſaid, The ſaid Iuſt. of P. may commit ſuch Conſtable &c. to the Common Gaole, there to remaine without bayle, vntill the ſaid offendor, be by the ſaid Conſtable, or by ſome other by his procurement, whipped as aforeſaid. P. 2.

But no Iuſtice of peace ſhall execute this ſtatute for any of the offences aforeſaid, done vnto himſelfe, vnleſſe he bee aſſociated and aſſiſted with one or moe other Iuſtices of peace whom the offence doth not concerne. P. 3.

Tythes.

Tythes.

27.H.8.20. P.Iuſt.104. TWo Iuſtices of the peace (the one being of the *Quorum*) vpon complaint by any competent Iudge of Tythes, for any miſdemeanor of the defendant in a ſuit of tyhes, may cauſe him to be attached, or committed to ward, vntil he find ſufficient ſureties (vnto the ſaid Iuſtices) by recogniſance to the kings vſe, to obey the proces and ſentence of that Iudge. *Two Iuſtices.*

32.H.8.7. P.Iuſt.104. Alſo vpon complaint in writing by any Eccleſiaſticall Iudge, that hath giuen definitiue ſentence in caſe of Tythes, againſt one, which wilfully refuſeth to pay the Tythes, or ſummes of money ſo adiudged: Two ſuch Iuſtices of peace may cauſe the party to bee attached, and committed to the next Gaole, till he finde ſuch ſuretie (as aforeſaid) to performe that ſentence

Tyle.

17.Ed.4.4. P.3.4. Lambt.197. IT ſeemeth by the wordes of the ſtatute, That any one Iuſtice of peace may inquire, heare, and determine (by examination, or otherwiſe, by their diſcretion) of all and ſingular the offences committed in Tyle making, (*ſcilicet*, if they be not made good, and of earth well prepared, and alſo of due aſſiſe in length, breadth, and thickeneſſe.) And may aſſeſſe the fines limited by the ſame ſtat. And may call before him ſuch as haue beſt knowledge in Tyle making, and appoint them ſearchers of the ſaid defaults, but *quære Lambert* 197.

Watch.

13.Ed.1. P.1. EVery Iuſtice of peace may cauſe night watch to be duly kept, for the arreſting of perſons ſuſpect: and nightwalkers bee they ſtrangers, or others that be of euill fame, or behauiour: and this they may doe by force of the commiſſion, the firſt *Aſſig. Lambert.* 190.

Ibid. This watch is to bee kept yearely from the feaſt of the Aſcention, vntill Michaelmas, in euery towne, and ſhall continue all the night, *ſcilicet*, from the Sunne ſetting, to the Sunne riſing.

All ſuch ſtraungers, or perſons ſuſpected, as ſhall in the night time paſſe by the watchmen (appointed thereto by the Towne, Conſtable, or other Officer) may bee examined by

the ſaid watchmen, whence they come, and what they be; and of their buſineſſe &c. And if they find cauſe of ſuſpition, they ſhall ſtay them: and if ſuch perſons will not obey the arreſt of the watchmen, the ſaid watchmen ſhal leuie huy and cry, that the offendors may be taken; or elſe they may iuſtifie to beat them (for that they reſiſt the peace and Iuſtice of the Realme) and may alſo ſet them in the ſtockes (for the ſame) vntill the morning, and then if no ſuſpition be found, the ſayde perſons ſhall bee let goe and quit: But if they find cauſe of ſuſpition, they ſhall forthwith deliuer the ſaid perſons to the Conſtable, and hee to conuey them to the Iuſtice of peace, by him examined, and to be bound ouer, or committed, vntill the offendours be acquited in due manner. See more of watch in the title *Felonie*.

Watermen.

EVerie Iuſtice of peace (as it ſeemeth) within the ſhires next adioyning to the riuer of Thames (betweene Graueſend and Windſor) within his ſeuerall iuriſdiction, hath power (vpon complaint made to him by the Ouerſeers and Rulers of the Watermen and Whirrymen, or two of them, or by the Maſters of any ſuch ſeruants) to examine, heare and determine all offences againſt the Statute: And to ſet at large him that ſhall bee impriſoned by ſuch Ouerſeers or Rulers (if there bee iuſt cauſe,) And alſo by his diſcretion to puniſh thoſe Ouerſeers and Rulers, that ſhall vniuſtly puniſh any perſon. 2. & 3. P. & M. ca. 16. P. Botemā 4 P. Iuſt. 109. Lambt. 205.

The offences againſt this ſtatute, are theſe:

1 No ſingle man ſhalbe a waterman there &c. P. Botem. 4.

2 One of the (two) watermen, rowing together in one boat, muſt be allowed by the moſt part of the 8. Ouerſeers, by writing vnder their ſeale. P. ibid. 3.

3 Watermen ſhall not hide themſelues in time of preſſing for the kings ſeruice &c. P. ibid. 6.

4 Watermen ſhall not take for their fare and labor, aboue the priſes aſſeſſed &c. and ſet vp in tables in Weſtminſter Hall &c. P. ibid. 7.

Waxe.

EVery Iuſtice of peace may examinine, and ſearch (by his diſcretion) ſuch as doe ſell or ſet forth to be ſold any candles or other works of waxe at higher price then after the rate of 4. d. the pound, ouer the common price of plaine waxe, betweene merchant and merchant, and may puniſh them by forfeiture of the worke or value thereof, and by fine to the king. 11. H. 6. 12. P. Waxe 8. P. Iuſt. 42.

Wine.

Wine.

24.H.8.6. P.Wine.4. EVery Iuſtice of peace (as it ſeemeth by the words of the ſtatute) within the precinct of his office, (at the requeſt of any ſubiect, to whom deniall of ſale ſhall be made of any Wine, and full payment therefore offered according to the prizes ſet downe by the Lordes, &c.) may enter into the places where ſuch Wine ſhall lie, and may ſell and deliuer the ſame wine deſired to bee bought, to the perſon requiring to buy the ſame, taking the Buyers money towards the ſatiſfaction of the forfeiture, &c.

Wood.

TWo Iuſtices of peace (not being of kindred, alliance, counſell, or fee, to the Lord or owner of a Wood) appointed by the more part of the Iuſtices of peace at their Seſſions, vpon complaint of the Lord made vnto them, may diuide and ſet out the fourth part of the Wood, if the Lord and Commoners thereof (being firſt called before them) cannot agree vpon it.

Weights.

11.H.7.4. P.Iuſt.92. Lambt 345. TWo Iuſtices of peace (the one being of the *Quorum*) may by examination, or enquiry, heare and determine the faults of head Officers, in Cities, Burroughs, and Market Townes, That doe not twice euery yeare view and examine, all weights and meaſures in their townes &c. And doe not breake and burne the defectiue.

Ibid. Alſo two ſuch Iuſtices, may (by examination, or enquiry) heare and determine the defaults of all buyers and ſellers, which doe not buy and ſell, with weights and meaſures that bee lawfull, (*ſc.* with ſuch as bee marked and ſealed, or like and equall with the Kings ſtandard.) Alſo the ſaid Iuſtices may breake and burne all defectiue weights and meaſures.

Lambt 345. P.weights.9.

P. Iuſt.92. Lambt.345. The ſaid Iuſtices may fine all and euery the offendors aforeſaid by their diſcretion, and may make Proces againſt them, as if they were indited of treſpaſſe againſt the peace. For the proceſſe, ſee hereof in the title, *Proceſſe*.

Now for the redier direction of the Iuſtices of peace herein, I thought good to ſet downe the iuſt and certaine contents of all (or moſt ſorts of weights and meaſures, that ſo they may the better iudge what weights and meaſures be vnlawfull, or defectiue, and what not.

By

By the Statute of *Magna Charta, cap.*26. there shall be but one Weight, one Measure, and one Yard, throughout the whole Realme, (*sc.* according to the Kings Standard in the Eschequer) and this statute of *Magna Charta*, hath since herein bin confirmed by many seuerall Parliaments: *viz.* by the Statutes of 14. *Ed.* 3.12.27.*Ed.*3.10.13.*R.*2.9. 8.*H.*6.5. 7.*H.*7.4. 11.*H.*7.4. and 12.*H.*7.5. as thereby appeareth. 9.H.3.26. P.weights.1. P.7.

And yet notwithstanding there alwayes hath beene, and still are two kindes of weights vsed in England, and both warrantable, the one by law, the other by custome, (as it seemeth) but they are for seuerall sorts of wares or commodities; for there is *Troy* weight, and *Auerdepois*. Rast.8.diu. fol.527.b.

1 *Troy* weight is by Law, and thereby are weighed Gold, Siluer, Pearle, Precious stones, Electuaries, Bread and wheat, and all manner of graine, or corne is measured by *Troy* weight. And this hath to the pound twelue ounces, or twentie shillings sterling weight. Rastal 8.diu. fol.527.b.

2 *Auerdepois* weight is by custome (yet confirmed also by statute) and thereby are weighed all kind of Grocery wares, Phisicall drugges, Butter, Cheese, Flesh, Waxe, Pitch, Tarre, Tallow, Wools, Hempe, Flaxe, Iron, Steele, Lead, and all other commodities not before named, (as it seemeth) but especially euery thing which beareth the name of Garbell, and whereof issueth a refuse, or waste. See *Rastal.*8.*fol.*527. and the Booke of *Assise impress.* 1597. Rast.8.

And this hath to the pound sixteen ounces, or fiue and twentie shillings sterling weight. Also in this *Auerdepois* weight, vnto euery hundred is allowed twelue pound weight.

Also all manner of *Auerdepois*, shall bee weighed by lawfull weights, sealed according to the Standard of the Eschequer; *P. weights.*14. 25.Ed.3.9. 27.Ed.3.10.

Auerdepois weight.

Auerdepois weight.

- 14. ounces and an halfe, and 2. pence weight Troy do make 16. ounces of Auerdepois.
- 7. pounds or, pints, Auerdepois, make the gallon,
- 14 pounds or, pintes, Auerdepois, make the pecke,
- 56 pounds or, pints, Auerdepois, make the bushell,

of wheate, &c. Booke of Assise.

Pints,

Troy weight.

Pints, or pounds.	5120	512	256	64	16	8	4	Measures of graine, according to Troy weight.
Quarts.	2560	256	128	32	8	4	2	
Pottles.	1280	128	64	16	4	2	1	
Gallons.	640	64	32	8	2	1		
Peckes.	320	32	16	4	1			
Bushels.	80	8	4	1				
Coombes.	20	2	1					
Quarters.	10	1						

Tenne quarters of corne is a Last.

	Beere measures.						Ale measures.						
Pintes.	288	144	72	8	4	2	256	128	64	8			Measures of Beere, &c.
Quarts.	144	72	36	4	2	1	128	64	32	4			
Pottles.	72	36	18	2	1		64	32	16	2			
Gallons.	36	18	9	1			32	16	8	1			
Firkens.	4	2	1				4	2	1				
Kilderkins	2	1					2	1					
Barrels.	1						1						

See for Corne, Beere, and Ale, more fully in that which followeth.

Troy weight, 22. *H.* 7. 5.

- 32. Wheat cornes taken in the midst of the eare, weigheth j. d. sterling.
- Twentie pence sterling maketh the ounce Troy.
- 12. Ounces maketh in { weight j. li. Troy. / measure, j. pinte.
- Two pints, or pounds, maketh the quart.
- Two quarts maketh the pottle.
- 8. pints, 4. quarts, 2. pottles } maketh the Gallon.
- Eight quarts maketh the Pecke.
- 64. pintes, 32. quarts, 8. gallons, 4. pecks } maketh the { Bushell, or Firken.
- Sixteene gallons. Two firkens. } maketh the { Kilderken. / halfe Barrell. / Rondlet.

256. pints

256. pints
128. quarts
32. gallons
4. firkens
2. kilderkens
4. buſhels.
} maketh the { Coombe, or Barrell.

512. pints
256. quarts
64. gallons
8. firkens
4. kilderkens
2. barrels
8. buſhels.
} maketh the { Quarter, or hogſhead

So the { Pints and pounds / Firken and buſhell / Barrel and coombe / Hogſhead & quarter } are of like content.

Meaſures of Corne.

All kinde of corne and graine, is meaſured by Troy weight.

By Statute, the Buſhell muſt conteine eight gallons, or ſixtie foure pounds or pints of wheat. 31. *Ed.* 1. 12. *H.* 7. 5. *P. weights* 2. *Raſtal.* 34. *diu.*

And yet by the booke of Aſſiſe imprinted, *Anno Dom.* 1597. the Buſhell is to containe 56. pounds or pints of Auerdepois weight, (which is three pounds or three pints, and eight ounces Troy more then the ſtat. or Troy weight.) For 56. pounds or pints Auerdepois weight, and 67. pounds, 8. ounces Troy weight, doe iuſtly agree. See the booke of Aſſiſes.

Alſo 8. buſhels ſtricken, make the quarter of corne. 11. *H.* 7. 4. P. 3.

Alſo euery meaſure of corne ſhalbe ſtriked without heape. 25. *E.* 3. 10. P. 1.

Water meaſure (ſold within ſhipboard) ſhall conteine 5. pecks ſtricken to the buſhel. P. 9.

No perſon ſhal buy or ſell with a Buſhell, except it bee ſealed, and marked by the officer, and according to the Kings ſtandard. P. 9.

But note, that in many places and countries, the meaſure of corne doeth much differ; and the buſhell in one place, is greater then in another; and it ſeemeth, *Conſuetudo loci eſt obſeruanda*: ſee hereafter in this title. *Tamen quære*, for it is contrary to the ſtat. of *Magna Charta, cap.* 26. and diuers other ſtatutes, as you may ſee before in this title. And cuſtome or preſcription againſt a ſtatute ſeemeth not good: See *Br. Preſcrip.* 2, 50. 9. H. 6. fol. 56, 30. all. pl. 38.

For

For the Assise of Bread, I referre you to the Bookes made for assise thereof, and will set y downe onely two or three obseruations therein.

1 All sorts of Bread ought to be weighed by Troy weight.

2 *Post septem dies, panis non ponderetur.*

3 The Bakers shall not sell to any victualer &c. to be retailed, but onely thirteene peniworth for twelue pence, as well mans bread, as horsebread.

For the punishment of the Baker, for their vnlawfull breads, *quære*, whether they shall be amerced &c. after inditement and conuiction of their said offence; or that the Iustices of peace (or sworne officers in Leetes) may take away their vnlawfull bread, and giue it amongst the poore, as Officers in Corporate townes are inabled to doe (as it seemeth) in the ende of the booke of Assise imprinted, *Anno* 1597. And all Iustices of peace are there willed and required to bee ayding and assisting to the said officers therein.

Measures of Wine, Beere, and Ale, &c.

18.H.6.17. P.Wine.13

Wine, Oile, & Hony. their measure is all one, *sc.* the

Rondlet,	16. & di.	gallons.
Barrell,	31. & di.	
Hogshead.	63.	
Pipe.	126.	
Tunne.	252.	

Yet for Hony the assise is altered to two and thirtie wine gallons the Barrell, sixteene gallons the Kilderkin, &c. 23. *Eliz.* 8. *P. Waxe.* 6.

23.H.8.4. P.Coopers.2.

Beere, the measure thereof, is as followeth, *sc.* the

Firkin,	9.	gallons.
Kilderken,	18.	
Barrell,	36.	

And so Beere measure conteineth in the Barrell foure gallons more then Wine, or any other vessell.

P.Coop.2.

Ale the measure thereof is as followeth, *sc.* the

Firkin.	8.	gallons.
Kilderken.	16.	
Barrell.	32.	

Cromp.94.b. P.Aleh.7.

Yet it seemeth by M. *Crompton*, that it was agreed by the Iustices, that the measure of Wine and Ale should bee all one: But now by the statute of 1. *Iac. cap.* 9. Ale and Beere shall bee sold by retaile by one and the same measure: *sc.* by the Ale quart.

23.H.8.4. P.Sope.1.

Sope, the Barrel, halfe barrell, and Firkin, shall bee of the same content that Ale is, *sc.* the Barrell two and thirtie gallons or aboue, and the emptie vessell not to bee in weight aboue sixe and twenty pound, the empty Firkin not to weigh aboue sixe pound and halfe, and to contein 8. gal. or aboue of full and iust measure.

Butter

Butter alſo ſhalbe of the ſame meaſure that Sope is of.

Cheeſe. Cheeſe: A weye of Cheeſe muſt conteine thirtie two Cloues, and euery Cloue ſeuen pound of Auerdepois weight: ſee the ſtatute 9.*H.*6.8. *Raſtal.*28.*diu.* and the booke of Aſſiſe imprinted 1597. And yet by that booke of Aſſiſe, the weye of Suffolke cheeſe muſt conteine twelue ſcore and ſixteen pound of Auerdepois weight: (And the Barrel of Butter is of like weight with the foiſt) But the wey of Eſſex cheeſe or butter, is 300.li. weight, after the rate of 5. ſcore and 12. li. to the hundred, which is 16. ſcore, and 16. pound, of Auerdepois weight. P. weights.6.

Fleſh. Beefe, and other fleſh are ſixteene ounces Auerdepois in the pound, and eight of them pounds to make the Stone, except where the vſage of the Countrey require more poundes to the ſtone. *Booke of Aſſiſe.*

Fiſh. Herring the Barrell, halfe barrell, and firkin, ſhalbe of the ſame content that Ale is, *ſc.* the Barrell two and thirty gallons, &c. 13. *Eliz.* 11. *P. Fiſh.*9.

Alſo ſixe ſcore Herrings ſhal goe to the hundred, ten hundred to the thouſand, and ten thouſand to the Laſt.

Salmon and Eeles: ſee the contents of their veſſels, *Stat.*11.*H.* 7.*cap.*23.*P. Fiſh.*8,10.

Wooll. Wooll, foureteene pound weight goeth to the ſtone of wooll, and ſixe and twenty ſtone goeth to the ſack, 11.*H.*7.4.

Hempe, twentie pound weight, maketh the ſtone.

Sugar, Spices, and Waxe, eight pound maketh the ſtone, and thirteene ſtone and an halfe, or 108. pound, maketh the Hundred: ſee the ſtatute *de Compoſit.ponder.Raſt.weights.*8.

Lead, the content of the pound, the ſtone, and the load: ſee *Raſtal.weights* 8.

Leather, the content of the Dicker, and the Laſt: ſee *Raſtal. weights* 8.

The contents of Iron, Glaſſe, Linnen cloth, and diuers other things: ſee the ſtatute *de Compoſit.ponder.Raſt.*8.

All other Commodities of Tale, or Number, are ſolde by the Hundred, whereof

Cattell, and Fiſh are ſolde ſixe ſcore to the hundred: and yet the hundred of hard Fiſh muſt conteine eight ſcore. *Raſtal.* 8.

Alſo all other headed things, as Nayles, Pinnes, &c. are ſold ſixe ſcore to the hundred.

All other things haue but fiue ſcore to the hundred.

Fuell. For the Aſſiſe of Fuell, *ſc.* of Coale, Talwood, Billett, and Fagot, ſee the ſtatute of 7.*Ed.*6.7.43.*Eliz.*14. A ſacke of coales is foure Buſhels. P. Fuel.1.

Timber,

Tymber well hewen, and perfectly squared, fiftie foot thereof maketh the load.

Lath shall conteine in length fiue foot, in breadth two ynches, and in thickenesse halfe an ynch.

Tyle, the assise thereof (*sc.* the length, breadth, and thickenesse thereof.) See the statute 17. *Ed.* 4. *cap.* 17. *P. Tyle* 2.

A Bale of Paper, is ten Reame; a Reame is twenty Quires; a Quire is fiue and twenty sheetes.

A Roule of Parchment, is fiue douzen, or threescore skinnes.

P. Weights. 4. Three Barley cornes measured from end to end, maketh one ynch. *Measures of Length.* *Ynch.*

Foure ynches maketh a handfull. 27. *H.* 8. 6. *Handfull.*

Twelue ynches make a foote. *Foot.*

Three foote make a yard. *Yard.*

Three foote and nine ynches make an Ell. *Ell.*

Seuen foot maketh a fadome. *Fadome.*

Fiue yards and an halfe (which is sixteene foot and an halfe) maketh a Pole, Rood, or Pearch. *ibid.* *Pole.*

And yet by the vsage of many Countries, the Pole doth varie; for in some places it is eighteene foote, and in some places twentie foote goeth to the Pole: and there if a man shall sell a certaine

Co. 6. 67. 47. E. 3. fol. 18. number of acres of wood, &c. it shall be measured according to the vsage of the Country there, and not according to this statute; for *Consuetudo loci, est obseruanda.*

The same reason may seeme to hold of measures of corne, by the bushell. See a little before.

Fortie Pole in lengh maketh a Furlong. *Furlong.*

Eight Furlongs (or 320. Pole) make an English myle. *Myle.*

35. Eliz. cap. 6. Note, that our English myle containes 280. foote more then the Italian myle.

P. Weights. 4. Forty Pole in length, and foure in breadth, doe make an acre. *Acre.* *Stat. Compositi. vlnarum.*

And (by Mast. *Cambden fol.* 339. and *Hollinshed pag.* 13. *impres.* 1586.) one hundreth acres is an hyde of land; but yet it seemeth *Plow-land.*

Co. 9. 124. that a hyde of land (or plow land, or Carue of land, which are all one) are not of any certain content. See hereof before, in the title *High-wayes.*

Now that I haue set you downe the contents of most weights and measures, you must further obserue.

First, that in euerie County (*sc.* in the principall or shire towne there) there are (or ought to be) Standards of Brasse, for weights

11. H. 7. 4. 12. H. 7. 5. P. 7. and measures (according to the Kings Standard of his Eschequer) there to remain with the chiefe officers (of the same town,) according to which, euerie Citie, Borough, and Market towne,

within the ſame Countie, ought to make them common weights and meaſures, to be marked by him that keepeth the Standard.

Alſo in euerie Citie, Borough and Market towne, there ought to be a common ballance, and weights ſealed, and according to the Standard in their Shire towne (as aforeſaid) vpon paine to euerie Citie x.li. to euerie Borough v.li. and to euerie market towne xl.s. for their defaults. 8.H.6.5. 11.H.7.4. P.7,11.

Alſo no man (within any Citie, or Market towne) ought to buy or ſell with any weights or meaſures, except they be ſealed and marked in forme aforeſaid (*ſc.* according to the Kings Standard, and by the officers in whoſe poſſeſſion the Kings Standard remaineth): nor any other perſon out of a Market towne, except their weights and meaſures be like and equall with the Standard. See *Raſt al. fol.* 531. *c. diu.* 33. 11.H.7.4. P.9,&7.

And yet it ſeemeth by the ſtatutes 31. *Ed.* 1. and 8. *H.* 6.5. (*Raſt. diu.* 3 *et* 26.) that no man (though out of a Market towne) ſhall vſe Weights or Meaſures, nor other thing in the place of Weight, or Meaſure, that is not ſealed, according to the Kings Standard, vpon paine to forfeit the value of the goods weighed or meaſured, and two yeers impriſonment, and to be fined and ranſomed, and yeeld *quatreble* damages. See *Raſt. tit. Weights, et Cromp.* 94. See Raſt. diu. 5, 15, 26, 29, 32, 33.

The Officer that keepeth the Standard (in the ſhire towne) ſhall marke and ſeale other Weights and Meaſures, to all other the Kings ſubiects that ſhall require it; and they ſhall take for the marking of the Buſhell but one penie, and for all other meaſures but a halfe penie; and for weights, for euerie hundred weight a penie, and for halfe a hundred weight a halfe penie, and for euerie weight vnder, but a farthing. 11.H.7.4. P.8.

LEVIT. 19. 35, 36.

Yee ſhall not doe vniuſtly in iudgement, in line, in Weight, or in Meaſure: yee ſhall haue iuſt Ballances and true Weights.

PROV. 11.1.&20.10.

Falſe Ballances, or diuers Meaſures, are all an abomination vnto the LORD.

Here

¶ Here alſo I will giue a ſhort view of ſuch particular and priuate Statutes (made onely for ſome particular Shires, Cities, or Townes) as doe giue ſome *power alſo, vnto two (or moe) Iuſtices of Peace out of their Seſſions.*

For pauing of Algate ſtreete. 13. *Eliz.* 23. *et* 23. *Eliz.* 12. *Algate.*
For the repairing of Cardiff Bridge. 23. *Eliz.* 11. *Cardiff.*
For Iuſtices of Peace in Cheſhire, &c. 27. *H.* 8. 5. *Cheſhire.*
For repairing Chepſtow Bridge. 3. *Iac.* 23. *Chepſtow.*
For Chicheſter Hauen. 27. *Eliz.* 22. *Chicheſter.*
For pauing Drury Lane neere London. 3. *Iac.* 22.
See more here before *titulo London.* *London.*
For repairing the High-way there. 3. *Iac.* 19. *Non-ſuch.*
For recouerie of mariſh grounds there. 7. *Iac.* 20. *Norffolke. Suffolke.*
For making Couerlets and Dornicks there. 5. *Ed.* 6. 24. *Norwich.*
For Recogniſances to be taken of Leſſees in Northumberland 11. *H.* 7. 9. *Northumb.*
For amending Bridges within fiue miles thereof. 18. *Eliz.* 20. *Oxford.*
For repayring a Ferrie in the Iſle of Shepey. See 18. *Eliz.* 10. and 27. *Eliz.* 26. *Shepey.*
For laying out new High-wayes in Suſſex & Kent. 14. *H.* 8. 6. 26. *H.* 8. 7. *Suſſex. Kent.*
See before *tit. Purueyors.* *Vniuerſities.*
For repaire of Vpton Bridge: 3. *Iac.* 24. *Vpton.*
For wages of their Knights of Parliament. 35. *H.* 8. 11. *Wales.*
For eſtabliſhing Iuſtices of Peace in Wales. 34. *H.* 8.
For making of the Bridge at Wilton ouer Wye, in the Countie of Hereff. 39. *Eliz.* 24. *Wilton.*

Thus much concerning ſuch ſtatute, as the Iuſtices of P. out of their Seſſions of the peace are to meddle withall.

Now for a concluſion of theſe Stat. and of the ſeruices of the Iuſt. of P. therein, I wiſh them, that in all caſes where the whole matter is (by the ſtat.) committed to the Iuſtices of P. (to one alone, or to two Iuſt. or moe) out of their Seſſions to Heare & determ. &c. (as where, vpon his, or their own view, or by confeſſion of the offendor, or vpon examination and proofe of witneſſes;

and without any Indictment found or preferred, they may commit, or puniſh an offendor as conuict by ſuch view, confeſſion, or examination and proofe, as alſo where they may proceed by Enquirie and Indictment; that in euerie ſuch caſe of ſuch their iudiciall proceeding, they be ledde by no affection, but aduiſedly to examine and conſider of, aſwell the fact it ſelfe, as of the circumſtances, and then (in the feare of God, and according to Law) to proceed, and to ſee, or cauſe, due & diligent execution of the puniſhment to be done vpon the offendors, according to the qualitie and quantity of their offence, and as the Stat. themſelues do direct; for Law without due execution, and puniſhment of offendors, is as a ſheathed ſword, without any vſe or profit.

And here I will ſhortly point you out ſome particular offences, which by the ſtatutes are referred to the Iuſtices of Peace to heare and determine (out of their Seſſions) as aforeſaid, and will leaue the reſt to your owne ſearch.

1 Some particulars where one Iuſt. of Peace vpon his owne view, (of the offence) may puniſh the offendors.

Alehouſe-keepers, &c. ſuffering Townſmen to continue drinking in their houſes contrarie to the ſtatute. 1. *Iacobi cap. 9. Vide ant. tit. Alehouſes.*

Townſmen tipling in Alehouſes, &c. contrarie to the Statute. 4. *Iac. cap. 5. ibidem.*

Perſons that ſhal ride, or go armed, contrarie to the Stat. 2. *E.* 3. *cap. 5. Vide antea tit. Armor.*

Perſons that ſhall haue any Teynters &c. for the deceiptfull ſtretching of Cloth. *Vide antea tit. Cloth.*

Offendors in Forcible Entries or Deteyners, contrary to the Statutes. See *antea tit. Forcible Entrie.*

Keepers of places for vnlawful gaming. *Ant. ti. Games vnlawful*

Players in ſuch places *ibid.*

Players at vnlawfull Games whereſoeuer contrary to the Statutes. See as before.

2 Where one Iuſt. of Peace may puniſh offendors, as conuict vpon their owne confeſſion.

Perſons not repayring euery Sunday to Church. See *antea tit. Recuſants.*

Treſpaſſers in Corne, Orchards, or Woods, &c. contrary to the Statute. 43. *Eliz. 7. Vide antea tit. Treſpaſſe.*

Offences in Tyle-making, contrarie to the ſtat. *Vide ant. Tyle.*

Offences in Watermen, contrarie to the ſtatute. *Vide antea Watermen.*

Sheriffes, &c. entring plaints in their Courts, vnduly. *Vide antea tit. Sheriffes.*

3 Where

3 Where one Iuſtice of P. may puniſh offendors as conuict vpon examination, and oath of witneſſes.

Alehouſe-keepers &c. ſuffering Towneſmen in their houſes contrary to the ſtat. 1. *Iac. Vide antea tit. Alehouſes.*

Alehouſe-keepers &c. ſelling leſſe Beere or Ale, then according to the ſtat. 1. *Iac ibidem.*

Towneſmen, tipling in Alehouſes, &c. contrarie to the ſtatute 4. *Iac. cap.* 5. *ibid.*

Perſons not repairing euery Sonday to Church, they may be conuicted vpon the oath of one witneſſe. *Vide ant. tit. Recuſants.*

Tranſporters of Corne, &c. *Vide antea tit. Tranſportation.*

Treſpaſſers in Corne, Orchards, or Woods, &c. they alſo may be conuicted vpon the oath of one witneſſe. *Vide ant. tit. Treſpaſſe.*

4 Where one Iuſt. of P. may puniſh offendors, as conuict vpon examination generally; the ſtatutes not ſhewing what perſons ſhall be examined; in which Caſes it ſeemeth the Iuſt. of P. may thereupon examine aſwell the offendors themſelues, as other witneſſes.

The defaults of the Collectors of the Sheriffes amerciaments: as alſo of Bayliffes of Hundreds. *Vide antea tit. Sheriffes.*

Offences in Tyle-making. *Vide antea tit. Tyle.*

Offences in Watermen. *Vide antea tit. Watermen.*

5 Where one Iuſtice of Peace may puniſh offendors, vpon accuſation, or proofe, generally; which accuſation, or proofe, muſt be by examination of witneſſes onely, as it ſeemeth.

Offendors in keeping or vſing, Gunnes or Croſſe-bowes, &c. contrary to the ſtatute. *Vide antea tit. Gunnes.*

Diſturbers of Preachers. *Vide antea tit. Preachers.*

Souldiers that haue purloyned their Horſe or Harneis. *Vid. ant. tit. Souldiers.*

Note, that in theſe former Caſes, and in all other Caſes where the Iuſtice of P. is to take ſuch examination of witneſſes, or ſuch accuſation or proofe, as aforeſaid, though the ſtatute doth not expreſſely ſet downe that it ſhall be vpon oath, yet it ſeemeth fit, that the Iuſtice doth it vpon oath: for Mr. *Brooke* (ſomtimes chiefe Iuſtice of the Common Plees) was of opinion that euery examination ought to be vpon oath: and M. *Lambt.* 517. was alſo of opinion, that theſe examinions taken by the Iuſtices of P. ought alwayes to be vpon oath, the rather becauſe the triall in theſe Caſes dependeth wholly vpon theſe Examinations. *Vide antea tit. Examination.*

Alſo where the matter is to be tryed by witneſſes onely, it is fit that there be two witneſſes at the leaſt (except where the ſtatute doth expreſſely allow the oath or teſtimony of one witnes.) Plow. 11. a.

And ſo was the opinion of Maſter *Brooke*, that in ſuch caſe there ought to be two witneſſes at the leaſt; and agreeable thereto alſo is the booke and word of God: otherwiſe it is, where the triall is by a Iury of twelue men, there one witneſſe ſufficeth, yea there many times witneſſes are not neceſſary. See *Plo.fol.*12.a. Deut.17.6.& 19.15. Matth.18.16. 2.Cor.13.1.

Two Iuſtices. Where two Iuſtices of Peace (out of their Seſſions for the P.) may puniſh offendors, as conuict before them, vpon the confeſſion of the offendor, or vpon examination of witneſſes.

Clothiers, refuſing to pay the wages aſſeſſed, &c. See *antea tit. Cloth.*

Spinſters, &c. which ſhall imbeſil any part of their Wooll contrary to the ſtatute 7.*Ia.*7. (vpon proofe of one witneſſe.)

Perſons reſtrained from Maulting, &c. See *antea tit. Mault.*

Deſtroyers of Partridges, or other Fowle, or of their egges; or of Hares, or keeping hunting Dogges, contrary to the ſtatute 1.*Iacob.*27. See *antea tit. Partridges.*

Deſtroyers of Feſants or Partridges, contrary to the ſtatute 7.*Iac.*11. vpon proofe of one witneſſe. *ibidem.*

Such as ſhall put out of their pariſh (as poore perſons) thoſe that be not to be put out. *Vide antea tit. Poore, ter.*

Alſo the defaults of the Ouerſeers of the Poore.

Diſturbers of Preachers. *Vide antea tit. Preachers.*

Offendors which ſhal diſturb the execution of the Statute for Rogues; and Officers which ſhal be remiſſe or negligent therin, &c. *Vide antea tit. Rogues.*

The defaults of Officers and others, touching Weights and Meaſures. *Vide tit. antea.*

But note, that this maner of triall by examination of the offendors, or witneſſes, is not permitted to Iuſtices of Peace, but onely in caſes where eyther the Statutes do generally referre the Triall to their diſcretions, or elſe doe ſpecially authoriſe them to take the examinations.

In all theſe former Caſes, where the Iuſtices may heare and determine, or may puniſh offendors as conuict vpon their owne confeſſion, or vpon examination of witneſſes (it ſeemeth, in congruitie) the Iuſtices of Peace may graunt out their Warrants againſt ſuch offendors, to appeare before them, to anſwer to their ſaid offences; and thereupon may proceede to examine, heare, and determine the offence.

Where one or two Iuſtices of Peace may heare and determin, by Enquiry and Indictment taken before them, out of their generall Seſſions, as it ſeemeth.

Defaults of Sheriffes and Bayliffes, in not returning ſufficient Iurors to enquire of Forcible Entries, &c. *Vi.ant.tit. Forcible Entry.*

Offen-

Offendors in Ryots. *Vide antea tit. Ryott.*

Tranſporters of Corne,&c. *Vide antea tit. Tranſportation.*

Offences committed in Tyle-making. *Vide antea tit. Tyle.*

Defaults as well of Officers as of buyers and ſellers, with vnlawfull Weights or Meaſures. *Vide tit. Weights &c.*

And in theſe caſes, the offence being found vpon ſuch Enquirie, theſe Iuſtices haue authoritie not onely to make out Proceſſe against the offendors, vnder their owne *Teſte*, but alſo to commit the offendors to priſon, till they haue payed their fine, and to deliuer them vpon payment of the ſame, or vpon ſuerties giuen for it: or otherwiſe it ſeemeth the Iuſtices may receiue the Trauerſe of the offendors, &c. for to all theſe effects, the wordes (in thoſe ſtatutes) Heare and determine doe ſeeme to leade and inable the ſaid Iuſtices.

See Lamb. 317 & 496.

Suertie for the Peace.

SVertie for the Peace, is the acknowledging of a Recogniſance (or bond) to the King (taken by a competent Iudge of Record) for the keeping of the P. And it is called ſuertie, of the word *Securitas*, becauſe the partie that was in feare, is thereby the more ſecure and ſafe.

Lambt. 77.

This ſuertie for the peace, euery Iuſtice of Peace may take and command in two maners, or by a two-fold authoritie.

Fitz N. B. 79. h. Lambt. 77.

1 Firſt, as a miniſter, (commaunded thereto by a higher authoritie) as when a Writ of *Supplicauit*, directed out of the Chancerie (or Kings Bench) is deliuered to his hands: vpon this Writ that Iuſtice of Peace only (to whom ſuch Writ is deliuered) is to direct his Warrant to cauſe the partie to be brought before him (alone,) to finde ſuerties for the Peace: And therein the ſaid Iuſtice is to doe in euerie behalfe, according as the ſame Writ doth direct him.

See more concerning this Writ of *Supplicauit*, &c. *Vide poſtea tit. Suertie for the Peace.*

2 Secondly, as a Iudge; (and by vertue of his office, and of his owne power deriued from his Commiſſion) hee may command this ſuertie of the Peace to be found, and that eyther of his owne motion and diſcretion, or elſe at the requeſt or prayer of another.

Vpon Diſcretion.

The Iuſtice of P. (of his owne motion and diſcretion) may (if he ſee cauſe) commaund ſuertie of the peace to be found, or may binde a man to the peace (and that againſt all the Kings ſubiects,

iects,if the Iuſtice ſhall ſo thinke meet) in theſe Caſes following.

1 One that maketh an aſſault, or affray, vpon the Iuſtice of Peace himſelfe,the Iuſtice may commit him to priſon;till he hath found ſuerties for the peace. 5.H.7.6.

2 So of ſuch as in his preſence ſhall make an affray vpon another,or ſhall ſtrike,or aſſault,or offer to ſtrike another. *Vid.tit.ant. Affray.* PR.18,19.

3 So of ſuch as in his preſence and hearing, ſhall threaten to kill,beate,or hurt another,or to burne his houſe.

4 So of ſuch as in his preſence, ſhall contend onely in hote words; for from thence oftentimes doe enſue Affrayes and batteries,and ſomtimes mayhems, yea manſlaughters and murders. PR.18.

5 So of ſuch as in his preſence ſhall goe or ride Armed offenſiuely,or with an vnuſuall number of ſeruants or attendants; for theſe are accompted to be in affray and feare of the people,and a meanes of the breach of the Peace: So of Seruants and Laborers,that ſhal beare any weapons,contrary to the Stat. of 12.*R.*2. *Vide antea tit. Armor.* See Cromp.76 142. PR.4.

6 Alſo he may binde to the peace, any other perſon to him ſuſpected to be inclined to the breach of the peace. 9.Ed 4.3. PR.18.

7 If (out of the preſence of the Iuſtice of Peace) any man ſhall threaten to kill,maime, or beate another; or doe attempt, or goe about to doe it: then any Conſtable (being preſent, or at the prayer of the other partie) may arreſt ſuch offendor,to come before a Iuſtice of P. to finde ſuerties for the peace: and the Iuſt. may binde him to the peace. Cromp.135,& & 143. PR 22. Fitz.Bart.202.

8 If any Conſtable ſhall perceiue any other perſons (in his preſence)to be about to breake the peace,either by drawing weapons,or by ſtriking, or aſſaulting one another, or by aſſaulting the Conſtable himſelfe; he may take aſſiſtance, & carry them all before the Iuſtice to finde ſuerties for the peace: and the Iuſtice may binde them. 1.H.7.7.

9 If the Conſtable ſhall learne that certaine perſons be fighting or quarrelling in a houſe, he may breake open the doores & arreſt them,and carrie them before a Iuſtice of P. to find ſuerty of the peace: and the Iuſtice may binde them. PR.22.

10 Yea,the Iuſtice of P. (eyther vpon his owne diſcretion, or vpon any mans complaint)may make his Warrant;for any ſuch as haue made an Affray (though out of his preſence) and may binde them to the peace. *Vide antea tit. Armor.*

11 If one hath receiued a wound, it ſeemeth the Iuſtice of P. may take ſuerty of the Peace of the one,and the other(by his diſcretion) vntill the wound be cured,and the malice be ouer. *Popham* late Lord chiefe Iuſtice of England (an honourable & graue Iudge, See Br.Peace 21.

Iudge) did accordingly betweene *Iames* & *Benton* at Cambridge Assises. 3. *Iac.*

2. E. 3. cap. 3. Commission. 12 All such as shall go or ryde armed (offensiuely) in Fayres, Markets, or elsewhere; or shall weare or carry any Dagges or Pistolls charged: it seemeth any Constable seeing this, may arrest them, and may carrie them before the Iustice of Peace. And the Iustice may binde them to the peace, yea though those persons were so armed or weaponed for their defence; for they might haue had the peace against the other persons: and besides, it striketh a feare and terror into the Kings subiects.

See more *hic antea tit. Affray and Armor.*

13 Also the Iustice of P. (vpon his discretion) may binde to the Peace a common Barretter. *Vide tit. Barretter.*

14 So of Ryotters, *Vide tit. Ryotters, et Lambt. 79.*

21. E. 4. 40. 15. He that standeth bound to keepe the Peace, if he hath broken (or forfeited) his Recognisance, the Iust. of P. may and ought of discretion to binde him anew; but that must not be done vntill the partie be conuicted of the breach of the peace, vpon his Recognisance: for before his conuiction, it resteth indifferent whether the Recognisance be forfeited or no. But after that he is thereof conuict, and that the forfeiture be leuied, the Recogn. is then vtterly determined: and then he is to be compelled to finde new suerty, or else to be sent to the Gaole.

Br. Peace 17. Lambt 117. Cromp. 142.

So it seemeth, though the forfeiture be not leuied, yet if the partie be conuict for breaking the peace, he shall be bound of new. *Cromp. 141. et Br. Recog. 21.*

16 Also hee that standeth bound to keepe the peace, if his suerties be insufficient, the same Iustice, or another Iustice of the peace, may compell him to finde better suerties.

And in the former Cases, the Iustice of peace ought (of duety, or at least in good discretion) to commaund this suertie for the peace, although the same be not required by any other person: And if any such person shall refuse to giue such suertie, the Iustice of Peace ought to send him to prison, there to remaine vntill hee shall finde such suertie.

9. Ed. 4. 3. Br. Peace. 8. If a Iust of Peace (vpon his owne discretion) shall cause one to be arrested to finde suerties for the peace, and shal after let him goe without taking suertie or binding him to the peace, yet the partie no remedie.

Lambt. 80. PR. 18. A Iustice of P. may perswade a man to require the suertie of peace against another, and hee himselfe may graunt a Warrant for it, because it is no more then hee might haue graunted of his owne authoritie, without any demaund made; and it shalbe presumed that he saw cause to doe all this.

Also

Vpon request. Alſo at the requeſt or prayer of another, the Iuſtice of Peace may commaund this ſuertie of the peace, and may graunt his Warrant for it.

But here the Iuſtice of Peace muſt and ought firſt to take an oath, of the partie that demaundeth the peace; which oath muſt be to this purpoſe, *ſc.* That he ſtandeth in feare of his life, or of ſome bodily hurt to be done to himſelf, or to haue his houſes burned, (and that he doth not craue the peace for any priuate malice, or for vexation, but of verie feare, and for the needefull ſafetie of his body, or houſes,) for the words of the Commiſſion herein are, *Et ad omnes illos qui alicui, vel aliquibus de populo noſtro, de corporibus ſuis, vel de incendis domorum ſuarum, minas fecerint, ad ſufficientem ſecuritatem de pace &c. inueniendam.* Fitz. N.B. 79. h. Lambt. 84, 85.

So as he that ſhall be threatned to be hurt in his body (*ſc.* to be beaten, wounded, mayhemed, or killed) the partie ſo threatned may craue and haue the ſuertie of peace againſt the other.

Alſo if a man doe feare that another will kill, maime, beate, aſſault, or hurt him in body, he may craue the peace againſt ſuch other perſon.

So if a man doe feare that another will burne his houſe.

So if a man doe feare that *A.* will procure or cauſe any ſuch hurt to be done him by another, either in his body, or in his houſes; for the words of the Recogn. be, *Non faciet nec fieri procurabit.*

So if a man lieth in wait to beate, kill, or hurt another, it is good cauſe to require this ſuertie. *Cromp.* 135.

If a man be threatned to haue his goods burned, it ſeemeth by the opinion of M^r *Fitzh.* that he may demand ſuertie of the peace for this. *Quære tamen.* Lambt 84.

But where a man ſhall threaten to impriſon another, it is holden that the peace ſhall not be graunted; for the partie wronged may haue his Action of falſe Impriſonment, or a Writ *De Homine Replegiand'*, and ſo ſhall recouer dammages for his impriſonment. 17. Ed. 4. 4. Br. Peace 22.

Yet enquire hereof; for to threaten impriſonment, is within the words *Minas de corporibus*, and like harme may happen to a man by hard impriſonment, as by cruell beating of him. Lambt. 85.

Where a man is in feare, that another will hurt his ſeruants, or his cattell, or other goods, this ſuertie of the peace ſhall not bee graunted by the Iuſtice of Peace: but in this caſe Maſter *Fitzh.* ſaith, the party may haue a ſpeciall Writ out of the Chauncerie directed to the Sheriffe, that he ſhall cauſe ſuch perſon to finde ſuertie, that he ſhall doe no hurt or dammage to the other man in his bodie, or to his ſeruants or goods. And if he will not finde ſuertie, that then he ſhall arreſt and detaine him in priſon, vntill Fitz. N.B. 80. g. Lambt. 85.

he

he ſhall finde ſuertie: and that the Sheriffe ſhall certifie all that he ſhall doe thereupon, into the Chauncerie,&c. And it ſeemeth the Sheriffe ought to take ſuch ſuertie,by Recogniſance. And yet if a man ſhall threaten to hurt my ſeruant, or my wife,or childe, I ſee no cauſe, but that in their behalfe I may craue the Peace at the Iuſtices hands,by the words of the Commiſſion,and that the Iuſtice ought to graunt it.

If a man will require the Peace becauſe hee is at variance with his neighbour, it ſhall not bee graunted by the Iuſtice of Peace.

Note alſo, the ſuertie for the peace ſhall not be graunted but where there is a feare of ſome preſent,or future danger; and not meerely for a batterie, or treſpaſſe that is paſt, or for any breach of the peace that is paſt: for this ſuertie of the peace is onely for the ſecuritie of ſuch as are in feare. Now *Metus, eſt præſentis vel futuri periculi cauſa, mentis trepidatio.* So this ſuertie is, *prouidere præſentia, et futura, et non præterita.*

Br. F. Impriſ. 41 PR. 14.

And as for a batterie, or other like treſpaſſe, that is paſt, the partie wronged may haue his Action of treſpaſſe of batterie,&c. or may puniſh the offendor,by Indictment at the kings ſuit: and yet in ſuch caſe the Iuſtice may (if hee ſee cauſe) binde ouer the Affrayor. *Vide antea.*

If the Iuſtice of Peace ſhall perceiue that this ſuertie for the Peace is demaunded meerely of malice, or for vexation onely without any iuſt cauſe of feare, it ſeemeth he may ſafely deny it. As in common experience we finde it, That where *A.* ſhall vpon iuſt cauſe come and craue the peace againſt *B.* and hath it graunted to him; when *B.* ſhall come before the Iuſtice, *B.* likewiſe will craue the peace againſt *A.* (& will perhaps ſurmiſe ſome cauſe) but yet will neuertheleſſe be content to ſurceaſe his ſuit & demaund againſt *A.* ſo as *A.* will relinquiſh to haue the peace againſt him. Here the Iuſtice of peace ſhall doe well (as I thinke) not to be too forward in graunting the peace thus required by *B.* but to perſwade with him,and to ſhew him the danger of his oath which he is to take; but yet if *B.* will not be perſwaded, but will take his oath that he is in feare (where indeede hee neither doth feare,nor hath cauſe to feare) this oath ſhall diſcharge the Iuſtice, and the fault ſhall remaine vpon ſuch complainant.

For whom, and againſt whom this Suertie of the Peace ſhall be graunted.

THe Law hath conceiued ſuch an opinion of the peaceable diſpoſition of Noble-men, that it hath been thought enough to take

take one of their promiſes vpon his Honor, that hee would not breake the peace againſt a man. *Br. Contempts 6. 24. Ed.3.3. et 17.Ed.4.4.*

And therefore if a man ſhall haue cauſe to haue the ſuertie of the Peace againſt a Lord of the Parliament, or ſuch great and noble Parſonage, he ſhall not haue a Warrant from the Iuſtices of Peace to that purpoſe; nor yet haue a *Supplicauit* out of the Chancerie, directed to the Iuſtices of peace therefore: but if there be cauſe he may haue a *Subpœna* out of the Chauncerie (of common right, as it ſeemeth,) and there ſuch Lord or Noble-man ſhall be bound to the peace. And yet if ſuch Lord will not appeare vpon the *Subpœna* ſerued, *quære*, if an Attachment will lye againſt him vpon ſuch his default. Maſt. *Crompton fol.* 134.b. ſaith that it was holden in the Caſe of the Lord *Cromwell* in the Chancerie about 18. *Eliz.* That an Attachment lyeth not againſt a Lord where he maketh default vpon a *Subpœna* againſt him out of the Chancerie. *Dyer* 315. ſeemeth to accord. Fitz. Subp. 20.

But though it be true that the perſon of a Baron (who is a Peere of the Parliament) ſhall not be arreſted (for, or in caſes of Debt or Treſpaſſe) by his bodie, firſt in reſpect of their dignitie, ſecondly in reſpect that the Law preſumeth that they haue ſufficient Lands and Tenements wherein they may be diſtrained, yet in caſes of contempt it ſeemeth they may be arreſted by *Capias*, or Attachment, &c. Co.6.53,54. 11.H.4.15. Br.Repl.19.

Or elſe (it ſeemeth) that the partie may craue the Peace in the Chauncerie againſt ſuch Lord or Peere (*ſcil.* to haue a *Supplicauit* directed to the Sheriffe) and that the Sheriffe may and ought to execute the ſame: and that if the ſheriffe ſhall not doe his office therein, an *Alias Plur.* and Attachment lieth againſt him. And if the ſheriffe ſhall retorne, That ſuch Lord is ſo puiſſant that he cannot arreſt him, vpon ſuch retorne the ſheriffe ſhall be grieuouſly amerced (for he might haue taken *Poſſe Comitatus, ſc.* he might haue leuied three hundred men by his diſcretion if there had beene need, to haue aided him in ſuch caſe.) And if ſuch Lord or Peere who is by the ſheriffe ſo arreſted, ſhall refuſe to obey the arreſt, and ſhall make a *Reſcous*, whereupon the ſheriffe ſhall retorne a *Reſcous*, hereupon ſhall there be an Attachment graunted out againſt ſuch Lord, to arreſt and take his bodie, for ſuch his contempt. Fitz. Subp. 20. Fitz.N.B.79.E. Cromp.134.

The ſame Law and remedie ſeemeth to be where a man hath cauſe to haue the ſuerty of the peace againſt a Ducheſſe, Counteſſe or Baroneſſe; for they are Peeres of the Realme, and ſhal be tried by their Peers, although in reſpect of their ſexe, they cannot ſit in Parliam̃t: & they are in the ſame degree (as concerning their Nobilitie, Co.6.52,53.

Nobilitie, and the priuiledges incident to their dignities) with Dukes, Earles and Barons. But here note this diuerſitie, *ſc.* if ſuch a woman being a Counteſſe or Baronneſſe &c. by mariage only, ſhall marry againe vnder the degree of Nobilitie, ſhe hath thereby loſt her name of dignitie (together with the priuiledges of her ſaid Nobilitie alſo, as it ſeemeth) for in ſuch a caſe, *Si mulier nobilis nupſerit ignobili, deſerit eſſe nobilis*, and that which was gotten by marriage, may alſo be loſt by marriage; for *Eodem modo quo quid conſtituitur, diſſoluitur*; But if ſhee be Noble by birth or diſcent, whomſoeuer ſhe ſhall marry, yet ſhe remaineth Noble; for birthright *eſt character indelibilis*.

Co. ibid.

And yet by the curteſie of England, if women get to any degree of eſtate, they neuer loſe it by marrying after more meanely, but doe ſtill take place according to the eſtate of their firſt husband.

Suretie of the peace may bee graunted by the Iuſtice of peace, againſt a Knight, and againſt all other Lay perſons, being vnder the degree of a Baron or Peere of the realme, and they ſhalbe bound with ſureties.

Eccleſiaſticall perſons (if they bee not attending vpon Diuine Seruice) may bee arreſted for the peace, and they ſhall be bound with Sureties: But whileſt they are doing any Diuine Seruice, in the Church, Churchyard, or other place dedicated to God, they may not bee arreſted: 50. *Edw.* 3. 5. *P. Arreſts* 1.

36. H. 6. 23. Br. Moigne 14. & 15.

Suretie of the peace may bee graunted againſt the Sheriffe, Coroner, Eſcheator, and other ſuch Officers of Iuſtice; But Maſter *Marrow* aduiſeth that ſuch perſons bee not bound, *verſus cunctum populum*, but onely againſt ſuch perſon, as ſhall demaund it, leſt otherwiſe it ſhould argue them vnworthy of their ſaid Offices.

One Iuſtice of peace may grant this Suretie to any man, againſt one of his fellow Iuſtices; but great diſcretion is herein to bee vſed.

One Iuſtice of peace may demand this ſuretie of the peace (at the hands of his fellow Iuſtice) againſt another man.

If a man haue cauſe of ſuretie of the peace againſt one dwelling in the *Cinque* Ports, he muſt haue a Writ out of the Chauncery, directed to the Conſtable of Douer, and to the Warden of the *Cinque* Ports: the forme thereof ſee in *Fitz. N. B.*

Fitz. N. B. 80.

The wife may demaund this Suretie againſt her husband, (if hee ſhall threaten to kill her, or outragiouſly to beate her, or if the wife hath any notorious cauſe to feare that hee will doe ſo) and it ſhall bee graunted by the Iuſtice of Peace;

Or ſhee may haue it by *Supplicauit* in the Chauncery, *Fitzherb.* 238. *f.*

The husband, for the like cauſes, may demaund ſuretie of the peace againſt his wife.

Alſo the Iuſtice of peace, vpon his owne diſcretion, may (in either of the aforeſaid caſes betweene the husband and wife, eſpecially happening in his preſence) grant ſuretie of the peace.

An Enfant vnder the age of fourteene yeares, may demaund this ſuretie, and it ſhalbe granted him. Lambt. 81.

Alſo this ſuretie of the peace may bee granted at the prayer of any perſon, againſt a *feme couert*; or againſt an Infant though he bee vnder foureteene yeares of age (for if an Infant vnder foureteene hath diſcretion to demaund the peace, &c. then hath he diſcretion to breake the peace.)

But an Infant, and a *feme couert*, ſhall bee bound by Sureties onely, and they themſelues ſhall not be bound; And if they cannot find ſureties, they ſhalbe committed to priſon vntil they haue found ſureties. And yet if an infant ſhal be bound to the peace, &c. by Recog. taken by a Iuſtice of peace, it ſeemeth he ſhall bee eſtopped to auoid ſuch a Record, if he doeth not auoid it during his minority, for it is not void but voidable, by *Audita querela*. Co. 10. 43. Cromp. 237. b.

But if a *feme couert* ſhalbe bound, or acknowledge ſuch a Recog. (though her husband ioyne therin with her) yet it is meerely void, as to the wife, although ſhe ouerliueth her husband.

A man of *Non ſane memorie*, this ſuretie ſhall neither be granted againſt him, nor to him vpon his requeſt; And yet if there ſhall be cauſe, the Iuſtice of peace (vpon his diſcretion) ought to prouide for his ſafetie.

A man that is Lunatike (*ſc.* who at ſome ſeaſons hath the vſe of reaſon, and at other times not) it ſeemeth this Suretie of the peace may be granted againſt him; and alſo that he may demand the ſame againſt another.

And if one of *non ſane memory*, or a lunatike be himſelfe bound by Recogniſance before a Iuſtice of peace, to keepe the peace, it ſeemeth, ſuch Recog. ſhall bind them, and all others for euer. See Co. 4. 124. & 11. 77.

But *quære*, if there be not a difference to be taken herein, where a Recog. by a infant, or one that is *non compos mentis*, ſhall be acknowledged in a Court of Record, and where before a Iuſtice of peace out of the Seſſions.

A man that is deafe, dumbe, and blinde, ſhall not haue this Suretie; For he hath no vnderſtanding to aske it; and yet ſuch a perſon, (or any other perſon not hauing reaſon to demaund the peace) if there be cauſe, the Iuſtice of peace vpon his diſcretion, ought to prouide for their ſafetie.

A man

A man that is borne dumbe and blinde, may haue vnderſtanding; and therefore it ſeemeth this ſuretie may be granted to him, or againſt him.

But a man that is borne dumbe and deafe, can hardly haue vnderſtanding; for though the ſight be the chiefeſt ſence, yet by hearing we come quickly to knowledge, and therfore it ſeemeth not grantable to him, or againſt him.

And this ſuretie of the peace may be granted againſt an impotent perſon, although hee be ſuch a one as is not like to breake the peace himſelfe; for he may procure another to kill or beate one: And the common forme of the Recog. is to binde a man from procuring hurt, as well as from doing hurt.

This ſuretie of the peace may alſo bee granted to, or againſt a man attainted of Treaſon, or felony.

Cromp. 134. A man excommunicate, may haue this Suretie granted to him or againſt him.

So alſo of a man that is abiured the Realme; for notwithſtanding the abiuration, he oweth the King his legeance, and remaineth within the K. protection, and the K. may pardon and reſtore him againe, *Qui abiurat regnũ, amittit regnum, non regem, Co. 7. 9. b.*

A man attainted in a *Præmunire*, may (at this day) haue this ſuretie granted to him. *P. R. 19.*

Cromp. 134. P. R. 19. An Alien borne, who is made Denizen, may haue this ſuretie; and ſo of an Alien borne who liueth in England vnder the Kings protection (although he be not made Denizen.)

Co. 7. 17. And ſo of an Alien, whoſe King is in league with our King; or if there be no warres between this realme, and that realme wherof the Alien is, for by the common law, all theſe may get & haue within this realme, any perſonal goods, and may ſue for the ſame and ſo haue the benefit of the K. lawes and protection. But an Alien who is the K. enemy (*ſc.* where there is open warre betweene our King and his King) ſhall not haue this ſuretie granted to him, nor any other benefit of the Kings lawes.

Dyer. 2. Who ſhalbe ſaid to be an Alien, ſee *Co. 7. 16. 17.*

Co. 7. 18. In *Caluins* caſe, *6. Iac. Reg.* there is a difference taken betweene *Antenati*, & *Poſtnati* in Scotland, where it is holden that *antenati* in Scotland, *ſc.* ſuch as were borne there before the K. happy comming to the crown of England, are here aliens borne, the reaſon is, for that at the time of their birth, they were vnder the legeance and obedience of another K. and he could not be a ſubiect borne of the kingdom of England, that was born vnder the legeance of a K. of another kingdom: And yet it is manifeſt that *Antenati* being ſubiects, are herein prouided for, by the commiſſion it ſelf, the words wherof are, *Et ad omnes illos qui alicui vel aliquibus de populo*

nostro, &c. of which number *Antenati* bee; so as they may and ought to haue this suretie granted them, as well as any other subiects. See *Dyer. fol.* 304.

An Irishman borne, is a naturall borne subiect, and capable of, and inheritable to lands in England, and therefore may haue this suretie. Co. 7. 23.

But it may bee questioned, whether an Infidel, Pagan, or Iew, shall haue this securitie graunted them; For in law they are *Perpetui inimici*, There is betweene the Christians and them perpetuall enmitie, and can be no peace; Neither can they get any thing within this Realme, nor maintaine any action at all, 12. *H.* 8. 4. Co. 7. 17.

A Villeine may haue this surety of the peace against his Lord, and the Lord may haue it against his Villeine, and yet it maketh no manumission, although it were demanded by the Lord, without any protestation, &c.

How this Suretie of the peace may bee commaunded, and how the same Commaundement shalbe executed.

The Iustice of peace may command this suretie of the peace, either by word onely, or by writing.

1 By word onely, the partie being in his presence, as if in the presence, and hearing of the Iustice of peace one man doeth threaten another, or shall make an affray, or assault vpon another, or doe other like thing tending to the breach of the peace, the Iustice of peace may commaund him by word to finde sureties for the peace. 14. H. 7. 8.

Also if one shall demaund this suretie against another, who is then in the presence of the Iustice of peace, and will bee sworne that he is afraid of him, the Iustice may by word commaund the same partie to finde sureties for the peace. 14. H. 7. 9.

And the Iustice of peace (in such cases) may by word onely commaund the Constable, or any other knowne Officer (or his owne seruant) being then present, to arrest such partie to finde sureties for the peace. And if the partie shall refuse to finde such sureties, then the Iustice of peace may commit him to the gaole. 14. H. 7. 8. 9.

2 By Precept, or Warrant in writing, and vnder his seale; And this must bee directed to some Officer, or other indifferent person, and must conteine the cause, and at whose suite, to the intent the partie to be bound, may prouide his Sureties, and take them with him.

The forme of which precept, see *postea tit. Warrants.*

The Iustice of peace may make his Warrant to bring the partie before himselfe (to finde suretie for the Peace) by the opinion of

Co. 3.59. Br. Peace 9. of *Wray*, chiefe Iuſtice; For he that maketh the Warrant, for the moſt part, hath the beſt knowledge of the matter, and therefore is the fitteſt to doe iuſtice in ſuch caſe. And yet the moſt vſuall manner is, to make ſuch a Warrant, to bring the partie before the ſame Iuſtice, or ſome of the Iuſtices of peace of the ſame 21.H.7.21. Countie, &c. And Iudge *Fineux* his opinion was, that where a Iuſtice of peace doeth make any Warrant for the Peace, *Ex officio*, there the partie may chooſe to appeare before him, or any other Iuſtice in that Countie. And that the partie may haue his Action of falſe impriſonment againſt the Officer, if hee doe otherwiſe compell him; otherwiſe it is in the execution of the Writt of *Supplicauit*, as you may ſee heere *poſtea ſub hoc Titulo*.

Who may ſerue this Warrant; and whether the Officer may make his deputie; and whether they neede ſhew their Warrant or no; and whether they may breake open the doores &c. ſee hereof *tit. Warrants, poſtea*.

The Conſtable (or other Officer) before hee arreſt the partie, vpon ſuch a Warrant, ought to acquaint him with the matter, 5 Ed.4 13. and withall, (yet ſome preſidents are, *quod capiatis, &c. P.R.20.* Lambt.92. *& Crompt.* 235.) to require or charge the partie in the Kings name to goe (with him) before the Iuſtice to finde ſureties according to the Warrant; And if the partie ſhall refuſe to doe this, *ſc.* ſhall refuſe either to goe before the Iuſtice, or to find ſureties, then the officer may arreſt him, by vertue of that Warrant, and may conuey him to the gaole, without carrying him to any Iuſtice, and there the partie ſhall remaine vntill he ſhall voluntarily offer and finde ſureties.

But if the partie ſhall yeeld to goe and to finde ſureties, then the Officer may not abſolutely arreſt him; But yet the officer is not bound to goe vp and downe with the partie, to finde ſureties, but may keepe the partie vntill he can procure ſureties to come to him: yet if afterwards the partie ſhall make any reſiſtance, or ſhall offer to goe his way, then the Officer may arreſt him, and by vertue of that warrant, may carrie him to the gaole, and may alſo impriſon him in the ſtocks, vntill hee can prouide ayde to conuey him to the Gaole.

14.H.7.fo.10.a Br. Peace. When the partie commeth before the Iuſtice of peace (by force of this Warraunt, or any other like Warraunt for the peace, good Behauiour, for a Riot, or the like) the partie muſt offer ſureties to the Iuſtices of peace, or elſe the Iuſtice may commit him to the priſon; for the Iuſtice needeth not to demaund ſuretie of him.

Alſo after that the partie ſhall bee brought before the Iuſtices,

if before him he ſhall refuſe to finde ſureties, the Officer without any new Warrant or commaundement, may carry the partie to priſon, and that by the words of the firſt warrant: and if hee ſhall refuſe thus to do, that then &c. ſee the forme of the warrant. Co. 5. 59.

If the officer do arreſt the partie, and doe not carry him before ſome Iuſt. of peace to find ſureties &c. or vpon the refuſall of the partie, if the Officer ſhall arreſt him, and doe not carry him to the gaole; in both theſe caſes, the Officer is puniſhable by the Iuſtices of peace for this neglect (by fine at their Seſſions) And alſo the party arreſted may haue his action of falſe impriſonment for the arreſt. 5. Ed. 4. 5. P. R. 20.

And if the partie be impriſoned for default of ſureties, and after he that demanded the peace againſt him happen to die, or releaſe the peace; it ſeemeth in theſe caſes, the Iuſtice of peace may make his Liberate or warrant for the deliuery of ſuch priſoner: for after ſuch death or Releaſe, there ſeemeth no cauſe to continue the other in priſon: Alſo any Iuſtice of Peace may (vpon the offer of ſuch priſoner) take ſuretie of him for the peace, &c. and may thereupon deliuer him as aforeſaid.

It ſeemeth (by ſome opinions) that if the partie impriſoned for not finding ſureties, hath a ſuite depending in the Common place, he may by the courſe of that Court by a writ of Priuiledge, be diſcharged of his Impriſonment, if the other partie be not ready in the Court at the day of the Returne of the Writ, to pray there new ſureties of the peace: But *quære*, for it may be he which demaunded the peace, hath no notice of the remooving of his body, and then how can hee be ready in the Court of Common place at the day? and therefore it may ſeeme a hard caſe, ſo to be defeated of this ſuretie. 4. Ed. 3. 16. 2. H. 7. 2. 4. Br. Priuiledg. 35. & 52. Lambt. 96.

If the partie hath gotten ſureties, then if the Warrant proceed *ex officio*, (and not vpon the Writ of *Supplicauit*) and bee a generall warrant, *ſc.* to come before me, or ſome other Iuſtice, the partie may goe before any other Iuſtice of peace to offer his ſuretie, yet he ſhall not inforce the Officer to trauell to a Iuſtice out of the Diuiſion or Limit where they bee dwelling, without good cauſe: Nay, it is at the election of the officer (who is the miniſter of Iuſtice) to carrie the partie attached, to any other Iuſtice of peace that hee will; for it is more reaſon to giue this election to the Officer (who in preſumption of law is a perſon indifferent, and is ſworne to execute his Office duely) then to giue the election to the delinquent himſelfe, who by preſumption will ſeeke ſhifts, and to weary the Officer. Co. 5. 59. Br. { Ex. imp. 11 / Peace 9.

If the other Iuſt. of peace (before whom the party ſo attached ſhal come) ſhal refuſe to accept & take ſuch ſurety being offred to him

him, this is punishable in the starre Chamber: for such Iustice of peace ought to take of him such suretie, and to bind him by recognisance; but yet that must be done in such sort, in all points, as the forme of the former precept doth require: And thereupon the same (other Iustice of peace (hauing so taken suretie for the peace) may and ought vpon requeſt, to make his *Superſedeas*, to all officers, and to all other the Iustices of peace of the same countie, and thereby the said party shal be discharged from finding other suretie, and from any other arrest for the same cause: But by such *Superſedeas* that other Iustice cannot discharge the first warrant of the first Iustice, vntill the partie be bound indeed; Nor can giue any other day to the partie to appeare at any other Sessions &c.

Lambt. 98. *Superſedeas by a Iuſt. of P.* Cromp. 145.

Also a Iustice of peace of the county, by a *Superſedeas* cannot discharge a warrant awarded by his fellow Iustice, by force of a *Supplicauit* to him directed out of the Chancerie, or Kings Bench, to take the suretie of peace of one resident in that countie.

Also when a man doth feare, that suretie of the peace will bee demaunded against him in the countrie, or doth heare that such a warrant for the peace is alreadie granted out against him, by a Iustice of peace: It seemeth, in either of these cases, hee may goe and giue suretie of the peace before any other Iustice of peace of the same countie where he dwelleth, and thereupon may haue a *Superſedeas* from that Iustice of peace &c. But in such case it is fit that such partie be vrged by such Iustice to put in sufficient sureties; and that he be bound towards the king, and all his people, and to appeare at the next Sessions.

If any officer hauing a warrant from a Iustice of peace to arrest a man to find suretie of the peace, shall receiue a *Superſedeas* (out of the Chauncerie, or Kings Bench, or from any Iustice of the Kings Bench, or from any Iustice of peace of that countie) to discharge the same suretie of peace: & yet neuertheleſſe wil vrge the party (by force of his warrant) to find (new) suretie for the peace: The partie may refuse to giue it; and if he be arrested or imprisoned for such refusall, he may haue his action of false imprisonment against such officer; for such *Superſedeas* is a discharge of the former precept or warrant.

Lambt. 101.

The forme of a *ſuperſedeas* granted by a Iustice of peace. See *poſtea tit. Warrants.*

And this *ſuperſedeas* is sufficient, though it neither name the sureties, nor containe the summes wherein they are bound; but yet it is the better forme to expresse them both. See 2. *H.* 7. 1.

Lambt. 99.

If the partie shall mislike to be (or stand) bound to the peace, by

Superſedeas from aboue.

by the Iuſtices of peace in the countrie, then may hee (either before, or after, that he is bound in the countrie) goe, or ſend vp to London, and there giue ſuretie for the peace, (either in the kings Bench, or in the Chancerie,) And thereupon the party may haue a *ſuperſedeas* (out of the court, where he hath giuen ſuch ſuretie) to reſtraine the Iuſtices of peace of the countrie, from taking any ſuretie of the peace of him: And then the Iuſtices of peace of the countrie after the receipt of ſuch *ſuperſedeas*, muſt forbeare to make any warrant for the peace againſt that partie: And if any Iuſtice of peace haue granted out any ſuch warrant againſt the ſaid partie, the ſaid Iuſtice may make his *ſuperſedeas* to the officers, thereby commaunding them to ſurceaſe to put his former warrant in execution, and ſo to diſcharge it, and to diſcharge the party of any arreſt, or impriſonment thereupon. See more *poſtea ſub hoc tit.* Fitz. N B. 81. a & 238. c.

The forme of a *ſuperſedeas* for the peace out of the K. Bench. See *lib. Intr.* 454.

The forme of a *ſuperſedeas* for the peace, out of the Chancerie. See *Fitz.* 238. c.

Note that this *ſuperſedeas* out of the Chancerie, may be procured at any time in the vacation, and out of terme. *Fitz. Nat. Br.* 236. a.

Lamb. 102.

If the Iuſtices of peace ſhall not ſurceaſe, after a *ſuperſedeas* (out of the Chauncerie, or Kings Bench) to them deliuered, an attachment will lye againſt him or them for ſuch contempt, and beſides they may be fined and impriſoned for it.

Yea ſuch a *ſuperſedeas* comming out of thoſe high courts, to the Iuſtices of peace, they ought thereupon to ſurceaſe, although ſuch a *ſuperſed.* ſhould be awarded againſt law.

If ſuch *ſuperſed.* ſhalbe directed to the Iuſtices of P. and ſherife, that Iuſtice to whoſe hands it ſhalbe deliuered, may keepe it, and may deliuer the label to the partie.

And (in theſe and the like caſe) the Iuſtice of peace ſhall doe well to ſend to their next generall Seſſions of the peace, as well the ſaid *ſuperſedeas* (if it come to his hands) as alſo the recogniſance which he had formerly taken of the partie, if he hath taken any; For peraduenture the recogniſance was forfeited before the *ſuperſed.* was purchaſed, or if it were not forfeited, yet the conuſor is not indamaged thereby.

If the partie ſhall procure ſuch a *ſuperſed.* (out of the Chauncerie, or Kings Bench) after that he is bound (by recogniſance before the Iuſtice of peace) to keepe the peace &c. and to appeare at the next Seſſions, *quære* whether the partie ſending (by his ſeruant) ſuch *ſuperſedeas* to the Iuſtices of peace at the next Seſſi-

ons

Lamb.115.116 Cromp.139. ons, be thereby discharged of his appearance there (the recognisance also being certified thither by the Iustice.)

It seemeth to some this difference is to be holden therein, *scil.* if the partie were bound (before the Iustice of peace) to keepe the peace against all men &c. and shall after procure such a *supersed.* testifying that he hath found suretie in the Chancerie &c. against all men, for euer, and shall send this to the Sessions, this shall discharge his apparance at the sessions: Otherwise if the *supersedeas* shall testifie that hee hath found suretie, but till a certaine day (which is after the next sessions:) But yet it seemeth safest in both cases, for the partie to appeare to saue his recognisance: see to the like purpose the case in 28. *H.* 8. *Dyer fol.* 25. where a man being arrested by the sherife vpon a *Capias*, found sureties for his appearance at the day, and after there came a *supersedeas* to the sherife, and it was moued whether it were necessarie for the defendaunt to appeare or not, or that this appearance and suretie were discharged by the *supersedeas*, And the opinion of the court was that hee ought to appeare for the sauing of his bond: Also the Presidents or Entries are, that the partie bound did shew his *supersedeas* in court, and prayed allowance thereof, and was therupon discharged.

28. H. 8. Dyer 25. Cromp. 140. Lib. Intr 453.

Now concerning the Recognisance for the peace.

THis Recognisance which the Iustice of peace taketh for the keeping of the peace, is rather of congruence, then by any expresse authoritie giuen them. *Fitz.* 82. *a.* 7. *H.* 4. 34. *acc.* *Recognisance*

And this Recognisance for the peace, if the Iustice of peace doth take it, by force of the writ of *supplicauit*, then he ought to execute it, and to doe in all things, as the writ directeth him; but where such writ prescribeth not the summe &c. or such like, that resteth in his owne discretion.

But if he take the recognisance *Ex officio*, and by force of the Commission, (and so as a Iudge, not as a Minister) Then it resteth in the discretion of the same Iustice of peace wholly to appoint and allow the number of sureties, their sufficiencie in goods or lands, the summe of money wherein they shall be bound, and to limit the time how long the partie shall be bound, and such other circumstances.

Lambt. 103.

In the booke 7. *H.* 4. *fol.* 34. a. you shall find the principall to be bound in one thousand pound, and foure sureties, euery of them in one thousand markes, before Iustices of peace, and for the keeping of the peace. 7 H 4

Quere if the Iustice of peace may not examine vpon their oathes,

oathes, the ſureties, concerning their ſufficiencie: it ſeemeth to be the vſage in the courts at Weſtminſter, and Maſter *Crompton* ſaith that the Iuſtices of P. in their ſeſſions may do it. *Cromp.* 294.

The moſt vſuall manner, and ſafeſt way is for a Iuſtice of peace to take two ſureties at the leaſt, (and thoſe ſubſidie men) beſides the party himſelfe, and to bind them by recog. to the K. *viz. dom. regi*: And it muſt alwaies be for the keeping of the peace.

And yet by the opinion of M^r. *Marrow* (who was in the time of King. *H.* 7.) a Iuſtice of peace might haue taken his ſuretie by a gage pawned only to him. Lambt. 104.

Alſo (by his opinion) a Iuſtice of peace might haue taken this ſuretie by an obligation made to himſelfe by the name of Iuſtice of peace.

Yet if a Iuſtice of peace had enioyned a man vpon paine of twentie pound to keepe the peace, this had beene nothing worth. But in this, and the former two caſes, and the like, this one generall ground or reaſon may be giuen for all, *ſcil.* that a man cannot be bound to the king, but onely by matter of record, and therefore ſuch ſuretie taken by gage or obligation, or ſuch enioyning of the peace ſeemeth nothing worth to bind the partie. Fitz. N.B. 81. d.

The forme. Beſides by the ſtatute 33. *Hen.* 8. *cap.* 39. (there is a plaine law made in theſe and the like caſes, which willeth that) All obligations &c. which ſhall be taken in any wiſe for the king, ſhall bee made in the kings name, and by theſe words, *Dn'o regi*: And if any perſon ſhall make, or take any obligation (or recogniſance) to the kings vſe in any other manner, he is puniſhable by impriſonment at the kings pleaſure &c. P. Accompts 1

A Iuſtice of peace may take a recog. (and thereby may binde the partie) to keepe the peace for one yeare, or for a longer time, (by his diſcretion) yea he may bind the party during his life vpon reaſonable cauſe. Marſ. lect. 6.

If the recogniſ. be made to keepe the peace (generally) without any time or day limited, it ſhalbe conſtrued to be during the parties life. *Lambert* 113.

A Iuſtice of peace intending to take a recog. for the peace, and and yet maketh no mention therin (nor in the condition therof) that it is for the preſeruation of the peace; it ſeemeth to be voide as being taken *coram non Iudice*: for a Iuſtice of peace hath no authoritie to take a recog. generally, but for matters concerning his office ſpecially. Lambt. 105.

If the recog. be, that the party bound ſhall not beat, nor maime A. yet it is not good, becauſe it ought to be for the keeping of the peace (generally) and the peace may be broken by burning the houſe of A. or the like. Lambt. 106.

If

If the recogniſance doe not limit any time of apparance, but be generally to keepe the peace, yet it is good; for the time of apparance is referred to the diſcretion of the Iuſtice; And the chiefe ſcope is, the keeping of the peace. *Marrow ibid.*

Alſo (by his opinion) if the recogniſance doe limit a time of apparance, but therin is no perſon named, before whom the party ſo bound ſhall appeare, then may he appeare (where he will) before that Iuſtice of peace which tooke the recogniſance. *Ibidem.*

But in the two laſt caſes, if a recogniſance ſhould be taken in ſuch manner at this day, I ſhould thinke it ſafe for the party to appeare at the next ſeſſions for the peace, and there to record his appearance. See more *poſtea ſub hoc tit.*

Cromp. 141. If the recogniſance bee to appeare at any other ſeſſions after (and not at the next ſeſſions) yet the recogniſance is good: And

P.Iuſt.106. yet by the ſtatute 3. *H.*7. *cap.*1. it is now enacted, that euerie recogniſance taken for the peace, by the Iuſtice of peace, and *Ex officio*, ſhall be certified (*ſcil.* ſent, or brought in) at the next ſeſſions of the peace, and their deliuered to the *Cuſtos Rotulorum*, whereby it may ſeeme that euery recog. taken for the peace, now ought to be, to appeare at the next ſeſſions.

Lambt.107. If the recogniſance bee in twentie pound to be leuied of his lands only, or of his goods only, yet it is good; And theſe words (onely) may ſeeme voide: for the acknowledgement of the recogniſance (before a compotent Iudge) both maketh it a debt, and implyeth the ordinarie means of law to come vnto it. See hereof *poſtea tit. Recogniſance.*

If the recogniſance bee, to keepe the peace towards the king, and all his people, but not towards any perſon certaine, yet it ſeemeth good.

Fitz.N Br.80 g Cromp.141. So if the recogniſance be to keepe the peace towards A. only, it ſeemeth good, or to keepe the peace towards A. and his ſeruants, without being bound toward the king, and all his ſubiects; it ſeemeth good.

But the beſt forme is to bind the partie, to keepe the peace towards the king and all his people, for firſt the words of the commiſſion are to find ſuretie, *Erga nos & populum noſtrum*, And againe the common vſage is ſo: And beſides it may otherwiſe proue dangerous to the partie who hath cauſe to craue this ſuretie of the peace: For the other partie who ſhal giue me iuſt cauſe to craue this ſuretie againſt him (becauſe he will not be bound to the peace towards me) he will perhaps pray to bind himſelfe to the peace to A. who is his companion, And then if the Iuſtice of peace ſhall ſo bind him, then may he and A. go before another Iuſtice

Iuſtice of peace (and that peraduenture within one weeke) and there A. may releaſe him of the peace; and ſo I (truſting that hee ſtill bound) may be after beaten, maimed, or ſlaine by him, or by his procurement.

So then though the recogniſance being taken in any manner or ſort aforeſaid, may proue ſufficient to bind the partie to the K. yet peraduenture it will excuſe the Iuſtice of peace from blame, and therfore it is ſafeſt for the Iuſtice of peace to follow the receiued forme.

The forme of the recogniſance for the peace. See *poſtea tit. Recogniſance.*

The recogniſance for the peace being thus taken, if it were by vertue of the writ of *Supplicauit*, the Iuſtice ought to returne the writ, and to certifie (vnder his ſeale) his doing therein into the court from whence the *ſupplicauit* proceeded: And he may alſo ſend ſuch recogniſance (ſo taken by him) with this certificate; or elſe he may keepe the recogniſance in his hands ſtill, vntill hee ſhall receiue a *Certiorari* out of the Chancerie directed to him for remouing of his recog. See more *Sub hoc tit poſtea.*

But if this recogniſance for the peace were taken by the Iuſtice of peace *Ex officio*, Then the Iuſtice of peace ought to certifie (ſend or bring) the recogniſance to the next ſeſſions of the peace, ſo that the partie bound may be called thereupon: and that if the partie make default of appearance, the ſame default may bee there recorded. 3.H.7.cap.1. P.Iuſt.106.

Note that the ſaid recogniſance it ſelfe, with the record of ſuch default ſhall bee ſent and certified into the Chauncerie, Kings Bench, or Exchequer, that from thence proces may goe out againſt the partie: And ſo ought it to be (as it ſeemeth) if it be preſented that the partie hath forfeited his recog. by breach of the peace. *Lambt.*570. Lambt.506.

If the Iuſtice of peace ſhall not certifie ſuch recogniſance at the next ſeſſions, the ſaid ſtatute 3.*H.*7.*cap.*1. limiteth no penalty; And yet ſee *Brooke tit. Peace* 11. That the Iuſtice ſhall forfeit x.li. if he do not certifie the recogniſance of the peace at the next ſeſſions: But Maſter *Brooke* there mentioneth the ſtatute 3.*H.*7 *cap.* 3. which ſtatute of 3.*H.*7.*cap.*3. was onely for bailement of priſoners, and certifying the ſame, and ſo ſeemeth to miſtake the ſtatute.

If he which demanded the peace ſhall releaſe the peace, before the ſaid next ſeſſions, then it ſeemeth, though the Iuſt. of P. ſhall not certifie the recogniſance, that the ſtatute is not tranſgreſſed or offended: for the partie ſhall not bee called in ſuch caſe vpon his recogniſance: And yet is it better to certifie the recogni- Cromp.169.

cogniſance, for peraduenture it was forfeited before the releaſe made.

Alſo he that demanded this ſuretie, may by a *Certiorari*, remoue ſuch recogniſance into the Chauncerie before the Iuſtice hath certified the ſame to the ſeſſions: or in caſe the Iuſtice ſhall not certifie the ſame thither. *Fitz.* 81. *c.* See hereof *poſtea* the form of the Iuſtices retourne of ſuch *Certiorari*, and of the recogniſance.

2.H.7.1. Br.Peace 11. Fitz.N.B.81.

If the Iuſtice of peace were deceiued in the ſufficiencie of the ſureties, the ſame Iuſtice of peace, or any other Iuſtice of peace, may afterwards compell the partie to find and put in other more ſufficient ſureties, and may take a new recogniſance for the ſame, for that the precept is, *ad inueniendum ſufficientem ſecuritatem.* But if the ſureties die, the partie principall ſhall not bee compelled to find new ſureties. See more *poſtea ſub hoc tit. & poſtea tit. Bailement.*

What thing ſhall diſcharge this recogniſance (of the peace) or the partie of his apparance at the Seſſions.

WHether a *Superſedeas* out of the Chancerie &c. ſhall diſcharge the partie of his appearance. See *antea ſub hoc tit.*

He which is bound to the peace, and to appeare at a certaine day, he muſt appeare at that day, and record his appearance, although he who craued the peace commeth not in to deſire it may be continued, otherwiſe the recogniſance ſhalbe forfeited.

39.H.6.26. Br.Surety 10.

And if a man be bound to keepe the peace towards the King and all his people, but not towards any perſon certaine, and to appeare at ſuch a ſeſſions.

The court at that ſeſſions may make proclamation &c. And if no perſon commeth to demaund the peace againſt him, then the court may diſcharge him: But if a man be bound as aforeſaid, and eſpecially to keepe the peace towards A. there, though A. commeth not in, to deſire that the peace may be continued, yet the court by their diſcretion ſhall doe well to bind him ouer till the next ſeſſions, and that may be, to keepe the peace againſt A. onely, if they ſhall thinke good, For it may be that A. who firſt craued the peace is ſicke, or otherwiſe letted, ſo as hee cannot come to that ſeſſions, to demaund the continuance of the peace further. And in ſome places in ſuch caſe, they ordinarily vſe to bind him ouer for two or three ſeſſions together, by order amongſt themſelues.

Lambt. 172.

And yet by the courſe of the common place, one that was impriſoned for the peace (being remoued there by a writ of priui-

ledge) was there diſcharged, for that he which demaunded the peace came not at the day (of the returne of the writ) to pray continuance thereof. See more *antea ſub hoc tit.*

If the Iuſtice of peace ſhal not certifie the recog. to the ſeſſions, yet the partie ought to appeare, and to record his apparance. See ſuch a matter of a ſherife who taketh bond of one to appeare in the common Banke at a certaine day &c. although the ſherife return not his writ &c. yet the partie muſt appeare to ſaue his bond *vide* 18. *Ed.* 4. 18. for this laſt caſe.

If the partie that is bound to appeare, be ſo ſicke as that he cannot appeare, nor by any meanes trauell, at the day, yet it ſeemeth his recog. in ſtricknes ſe of law is forfeit, and ſo it is by the courſe of the courts at Weſt. *vt dicitur*, yet in this caſe, vpon due proofe of ſuch his ſickeneſſe, I haue knowne the Iuſtices of P. (in their diſcretion) haue forborne to certifie or record ſuch forfeiture or default, And that they haue taken ſureties for the partie of ſome friends of his preſent in court, vntill the next ſeſſions, for that the principall intent of the recog. was but the preſeruation of the peace: But *quære* how this is warrantable by their oath. Beſides the party ſo bound might (by a *Certiorari*) haue remoued his recog. into the Chancery, or K. Bench, before the day of his apparance: and then he ſhould not haue needed to appeare at the ſeſſions, for that the Iuſtices there ſhould haue no record, whereupon to call him. Cromp. 143.

If the husband be bound that he and his wife ſhall appeare at ſuch a ſeſſions, and that they ſhall keepe the peace in the meane time &c. and at the day the husband doth appeare, but not his wife: Heere Maſter *Crompton* ſaieth the recogniſance is not forfeit; for if there ſhall bee cauſe to continue this ſuretie of the peace againſt the husband and wife ſtill, the husband ſhall bee bound, and not the wife, and therefore the wiues appearance ſeemeth not greatly materiall. Cromp. 144.

Releaſe. If a man be bound to the peace during his life, or generally, without any time or day limited: it ſeemeth that neither the K. the Iu. of P. nor the party can diſcharge this recog. during the life of the partie ſo bound, by releaſe or otherwiſe. *Br. Peace* 17. 21. E. 440. Lambt. 103.

The Iuſtice of peace who vpon his owne diſcretion hath compelled one to find ſuretie of the peace, vntill a certaine day, and hath taken recog. for his appearing &c. may vpon the like diſcretion releaſe the ſame before that day: and ſuch a releaſe will diſcharge the recog. taken by that Iu. if it were not forfeited before, and will alſo diſcharge the party ſo bound, of his appearance: for here alſo this buſineſſe depends only vpon the diſcretion of this Iuſt. of P. who bound him.

If

If a Iuſtice of peace ſhall grant the peace at the requeſt of another (*ſcil.* at the ſuit of A.) and the recogniſance be taken to keepe the peace againſt A. only, then (before the next ſeſſions) may A. onely releaſe it, and none other: And that releaſe being certified at the next quarter ſeſſions, will diſcharge the party ſo bound of apparance, ſo as he ſhall not be called vpon his recog. for that releaſe being ſo certified, is now become of record, aſwel as the recogniſance.

Br. Peace 17. If the recog. were to keepe the peace *verſus cunctum populum, & præcipue verſus* A. yet may the ſame A. releaſe it, for although this may ſeeme popular, and that all others ſhould haue intereſt therin aſwell as A. yet as it appeareth by the word *Præcipue*, it was eſpecially taken for his ſafety: but the contrary was holden by all the Iuſt. 21. *Ed.* 4. 48. & M. *Lam.* alloweth beſt of that opinion, neuertheles the vſage now is, and long hath beene, as is firſt beforeſaid. Lambt. 114.

But (in theſe former caſes) although this ſurety of the P. be releaſed, yet the recog. ſhal not be cancelled by the Iu. of P. for peraduenture the recog. was forfeited before ſuch releaſe made. And therfore the Iuſt. of P. ſhal do beſt to certifie ſuch recog. with the releaſe, together to the next quarter ſeſſions.

The forme of the releaſe of the Iuſt. of peace. See *poſtea tit. Releaſe.*

The forme of the releaſe of the partie.

Note that the party that firſt demanded the peace may releaſe the ſame, before the ſame Iuſt. of P. that tooke the recog. or before any other Iuſt. of peace.

Note alſo that to releaſe ſuch ſuretie of the peace by deed vnder hand and ſeale is nothing worth.

Note alſo the K. can in no caſe releaſe or pardon the ſuretie of the peace, nor ſuch recog. (taken in the behalfe of any of his ſubiects) vntill it be forfeited, for the miſchiefe that may come to the party thereby; but being forfeited, then the King and none other may releaſe and pardon the forfeiture.

Death.

1. H 7. 1. Br. Peace 15. But the death (or reſignation) of the king diſchargeth this ſuretie of the peace, taken by his ſubiect: for the recogniſance is to keepe the peace of the king, and when he is dead &c. it is not his peace.

Lamb. 116. Alſo the death of the recogniſor (*ſcil.* of the party principall that is bound) diſchargeth this ſuretie of the peace and the recogniſance.

Lambt. 116. Alſo the death of the partie, at whoſe ſuit the peace was taken, diſchargeth the recog. if it were to keepe the peace againſt him alone.

But yet in these three former cases, such death shall not discharge the recog. if it were forfeited before: And therefore it shall be best for the Iust. of peace to send to the next sessions, such recog. (notwithstanding such death) else the K. may be defrauded of a forfeiture, if any were before.

The death of the sureties, shall not discharge the recog. neither shall the partie principall be compelled to find new sureties, after their death: for if the peace bee broken after their deathes, their executors shal be charged therewith; and so there is no mischiefe by their deaths. yet *alij e contra ibidem.* 21.E.4.40. Br.Peace.17.

If the king and the recognisor be at issue vpon the breach of the peace, and the king waiues the issue: yet is not this recog. discharged, but may be sued againe vpon a new breach of the peace afterwards. 21.E.4.40. 10.H.7.11. Br.Recog.21.

What act shall be (or makes) a forfeiture of the recognisance taken for the peace.

WHatsoeuer act is a breach of the peace, the same is a forfeiture of this recog. Lambt.117.

And first this breach of the peace may be committed by vsing any fearefull or threatning speeches to another: Therefore all menacing or threatning to kill, or beate another, to his face, is a forfeiture of this recognisance: otherwise if the partie so threatned, bee absent; and yet if the partie so bound, shall threaten to kill or beate A. who is absent, and after shall lie in waite for him to kill or beate him, this is a forfeiture of his recoginsance. 18.E.4.28. Br.Peace 16.

So assaults, *scil* to strike at, or offer to strike at, a man, although he neuer hurt, nor hit him, is a forfeiture of this recognisance. See *Cromp.137.b.*

Much more all affraies, or violent and malitious batteries, strikings, beatings, woundings, or other misintreatings of the person of another, are forfeitures of this recognisance.

The difference of these 3. are, menacing beginneth the breach of the peace, assaulting increaseth it, and batterie accomplisheth it.

For breaches of the peace without word, or blow giuen; as to go with weapons, or company vnusuall, which be in *effray del pais.* See *pag. sequente.*

If he that is bound do but commaund or procure another to breake the peace, and that it be done indeed, this is a forfeiture of this recog. *Br. Peace* 20.

All imprisonment, or arresting of another without warrant, is a forfeiture of this recognisance. Lambt.130.

So

So to thruſt another into the water, whereby he is in danger of drowning.

So to raviſh a woman againſt her will.

So to commit any Burglarie, Robberie, Murder, or Manſlaughter, (all which are to the perſon of another) or to procure the ſame.

So to do any treaſon againſt the perſon of the king.

Marr. Lect. 7. a. H. 7. a. b. Note that the act which muſt make a forfeiture of a recogniſance for the peace, muſt bee done or intended to the perſon of another: (by the opinion of Maſter *Marrow*) And the booke 2. *H.* 7. importeth aſmuch, ſaying, that this ſuretie of the peace is not broken, without an affray, fighting, beating, or the like.

Marr. Lambt. 311. Alſo to be riotouſly aſſembled, is a breach of the peace, and a forfeiture of this recog. Nay if two Iuſtices of peace ſhall record a riot vpon their view (againſt a man ſo bound to the peace) although it were no riot &c. yet he cannot plead not guiltie, in a *Scire fac.* vpon his recogniſance.

Alſo to weare armour, or weapons not vſually worne, or to goe with an vnuſuall number of attendants, ſeeme alſo to bee a breach or means of breach of the peace, and a forfeiture of this recog. for the peace; for theſe ſtrike a feare and terrour in the people, and be in *effray del pais.* See *Br. Suretie* 12.

Hee that is bound to the peace, ought to cary himſelfe wel in his behauior, & company. See *antea ſub hoc tit.*

Yet the hauing of weapons or company vnuſuall, are in ſome caſes allowed, and lawfull, and are no breach of the peace. See hereof *poſtea in tit. Poſſe Comitatus.*

Batterie iuſtifiable. Alſo though Aſſaults and Batteries bee for the moſt part contrarie to the peace of the realme, and the lawes of the ſame, yet ſome are allowed to haue a naturall, and ſome a ciuile power (or authoritie) ouer others; ſo that they may (in reaſonable and moderate maner only) correct and chaſtice them for their offences, without any imputation of breach of the peace, yea they may (by the law) iuſtifie the ſame.

And therefore the parent (with moderation) may chaſtiſe his child within age.

So may the maſter his ſeruant, or apprentice.

So may the ſcholemaſter his ſchollers.

So may a gaoler (or his ſeruant by his commandement) his vnruly priſoners.

So may any man his kinſman that is madde &c. And none of theſe ſhall be in perill therefore to forfeit any recogniſance of the peace.

P. Fghting. 1. Note that the maſter may ſtrike his ſeruant with his hand, fiſt, ſmall

ſmal ſtaffe,or ſtick,for correction: and though he do draw bloud thereby,yet it ſeemeth no breach of peace, as appeareth by the ſtatute of 33.*H.*8.*cap.*12.

And where the ſeruant ſhalbe negligent in his ſeruice,or ſhall refuſe to doe his worke &c.there the maſter may chaſtice his ſeruant for ſuch negligence or refuſall; ſo as hee doth it not outragiouſly.

But if the ſeruant ſhall depart out of his maſters ſeruice, and the maſter happen after to lay hold of him,yet the maſter in this caſe may not beat,or forcibly compel his ſaid ſeruant, againſt his will to returne, or tarry with him, and doe his ſeruice, but either hee muſt complaine to the Iuſtices of peace for his ſeruants departure, or he may haue an action of couenant againſt his ſeruant, if being required to doe his ſeruice he ſhall refuſe it. See *antea tit.Laborers.* 38.H.6.25. 5.El.4. P.Labor 6.

And as the Mr. without a breach of the peace, cannot by beating,or force,compel his ſeruant to ſerue him againſt his wil: no more can a Lord, or Gardian in chiualry, compel his ward, by beating, or by force, to come vnto him, or to tarry with him againſt his will.

Alſo the ſcholemaſter, with a rodde,may chaſtice his ſcholler, which is careleſſe and negligent in learning, or that ſhall abuſe his ſcholefellowes,or for other the like occations. 21.E.4.6. Lib.Intr 613.

Alſo it is lawfull for the parents,kinſmen.or other friends of a man that is mad,or frantike(who being at libertie attempteth to burne an houſe,or to do ſome other miſchiefe,or to hurt himſelfe or others) to take and put him into an houſe,to bind or chaine him,and to beat him with rods, and to do any other forcible act to reclaime him,or to keepe him ſo as he ſhall do no hurt. 22.E.4.45. 22.Aſſ.p.56.

An Officer. Alſo if a Conſtable, Sergeant, Bailife, or other officer of Iuſtice, or any other being of their companie, for the better excuting of their office, ſhall bee forced to ſtrike any perſon, that will not yeeld to their arreſt, or that ſhall reſiſt,or flie from their arreſt, they ſhall not be in any danger to forfeit any recog.of the peace by any ſuch aſſault, or ſtriking, but may well iuſtify ſuch act. Lib.Intr 612. Stamf.13.14. 21.H.7.39.

In defence of my perſon. Alſo it is no breach of the peace,for any priuate man to beate, ſtrike,or wound another,in the defence and ſafegard of his owne perſon,from killing,wounding,or beating, but is a thing iuſtifiable: And yet it ſeemeth if another ſhal aſſault me,if I may eſcape with my life,or without being wounded, maihemed,or hurt,it is not lawfull for me to beat or wound the other,who firſt made the aſſault,but I muſt firſt flie,or go from him ſo far as I can. *Br.Treſ.* 71.28.25.*E.*3.42.2.*H.*4.8.33.*H.*6.18. *Br.Trn's* 28.71.*Cro.*137. Lib.Intr 611. 16.E.4.11. 12.E.4.6.

If

If two or more doe agree together to play at Barriers, backe-sword, Bucklers, Football, or such like, and one of them doeth wound or hurt another, the partie hurt shall not haue an action of Trespasse therefore against the other, for that it was by consent, and to trie their valour, and not to breake the peace. *Fitz. Barr.* 244.

Lamb. 132. Yet if such a man were before bound to the peace, such acte seemeth to bee a forfeiture of his Recognisance: see *Br. Coron.* 229. for although such sports be suffered, yet they are not lawfull.

Also it is no breach of the peace for a man to beate him, that doeth assault and would beate, wound or euill intreat his wife, father, mother, or master, but is iustifiable. *In defence of others.*

So if the wife shall beate him that shall assault, and would beat or euill intreat her husband.

So if the father, or mother, shall beate him that doeth assault, and would beat or euill entreat their child, being then within age, and not able to defend it selfe.

But though the seruant may lawfully beate him that doeth assault, and would beate, or euill intreate his master, or mistris; yet the seruant cannot iustifie the beating of another in defence of the father, mother, brother, sister, sonne or daughter of his master or mistris, for hee oweth no obedience or duetie to any of them.

PR. 5 F. iustific. 3. By some opinions the master cannot iustifie the beating of him that doeth assault, and would beat his seruant; but the master with a sword, staffe, or other weapon may defend his seruant assaulted from being beaten, in respect of the losse of his seruice: Yet Master *Lambert*, and Ma. *Crompton* are of opinion that the Mast. may beat another in defence of his seruant.

Lamb. 132. Cromp. 136.

Neither can the Fermour or Tenant iustifie such an acte in defence of his Land-lord: Nor a Citizen, &c. in defence of the Maior (or Bailiffes) of the Citie, or Towne corporate, where he dwelleth.

Lam. 132.

9. E. 4. 28. 19. H. 6 31. 65. Lib. Intr. 611. Also the lawe doeth tollerate a man to beate another for the preseruation of his goods: And therefore hee that shall attempt by force and violence, to take away my goods wrongfully from me, whether they be goods whereof I haue a lawful propertie, or such goods wherof I haue only a possession by the bailement of another, I may iustify to defend the same by force & if I shal hurt or beat such person, it is no breach of my Recog. for the peace: But if I kill him, it is felony, and then a breach of the Recog. *In defence of my goods.*

The same Lawe is in euery case, where another shall attempt by

by force to take away my land, Freehold, Coppihold, or Leaſe, or to ſtop, or turne my lawfull Highway, or my auncient Riuer, or water-courſe leading to my Mill; in theſe and the like caſes, if I ſhall diſturbe him therein, whereupon hee doeth aſſault and attempt to beat mee, I may iuſtifie to beat him againe, as well in defence of my perſon, as of my poſſeſſions, but not to kill him. 10.Ed.4.6. 3.H.4.9. 11.H.6.33.

In execution of Iuſtice.

The ſame Law is alſo in euery caſe, where an offendor is by order of Law puniſhed with whipping, ſtockes, pillorie, or otherwiſe, for any offence by him committed contrary to the lawes or ſtatutes of the realme, there is no peace broken, nor any Recog. of the peace forfeited, by him or them which ſhall (lawfully) execute any ſuch puniſhments.

Note further, that there are diuers offences, for which an Inditement *Contra pacem*, will lie, and yet the committing of ſuch offence, ſhall be no forfeiture of the Recogniſance for the peace; for that the acte that ſhall breed a forfeiture of ſuch a Recogniſance muſt be done or intended vnto the perſon, as aforeſaid, or *in terrorem populi*. Lambt.132.

Therfore to enter into lands, where he ought to bring his action, or to diſſeiſe another of his lands.

Or to enter into lands or tenements with force, being without offer of violence to any mans perſon; and without publique terrour. *Cromp.*136. Marow.lect.7.

Or to doe a Treſpaſſe in another mans corne or graſſe.

Or to take away another mans Ward.

Or to take away another mans goods wrongfully, (ſo it be not from his perſon.)

Or to ſteale another mans horſe, or other goods felonioufly, (being not from his perſon.) Ibid.

Theſe will make no breach no of this Recogniſance.

Note, that if a man be bound in ſuch a Recogniſance for himſelfe and his ſeruants; if any one of them breake the peace, the whole Recogniſance is forfeited. *Et ſic in ſimilibus*. 4.H.7.8.

Note alſo, that the ſureties may pleade that the partie principall, hath not broken the peace, although vpon iſſue the ſame ſhall be found againſt the ſaid principall; for they are eſtrangers thereto. *Fitz. Auerment.*46.

Now concerning the Writ of Supplicauit.

THe formes of this Writ, out of the Chauncery, are of diuers ſorts, as you may ſee, *Fitz.N.bre.*80. *d.*

By which formes of the Writ, it appeareth, that it may bee directed

rected to the Iuſt. of peace, or to one of them, or to the Sheriffe, or to euery one of them, to cauſe the partie that is to be bound, to come before him or them, to finde ſuretie of the peace; and this writ may be that the principal ſhalbe bound in ſuch a ſumme, and the ſureties in ſuch a ſumme certaine, (and that may bee in what certaine ſummes the demandant wil:) or the ſummes may by the Writ, bee referred to the Iuſt. of peace, &c. with this clauſe therein conteined, *pro qua reſpondere volueris*; And the ſaid Writ is further, that if the partie ſhall refuſe &c. that they ſhall commit him to the gaole, *quouſq; &c.* and that when they haue taken ſuch ſuretie, they doe certifie the Recog. (which they haue ſo taken) vnder their ſeales, and returne the writ into the Court from whence the ſame was awarded, and that without delay.

And for that this Writ is of diuers formes, the Iuſtice of peace muſt haue a care that he doe execute the ſame in euery behalfe as the ſame writ ſhall direct and appoint him.

When the writ doth referre the ſumme (wherein the principall and his ſureties ſhall be bound) to the Iuſt. &c. Then it reſteth in their diſcretion, but yet it is then ſafe for them to take good ſureties, and to bind them in good ſummes; and the rather when that clauſe is in the writ, *pro qua reſpondere volueris*.

21. H. 7. 20. Br. Peace. 9. When this Writ is directed to the Sheriffe, and to all the Iuſtices, and is deliuered to any one of them, hee onely to whom it is firſt deliuered, ought to execute the ſame Writ, (in euery behalfe) *ſc.* hee onely ſhall make a Warrant, &c. returneable before himſelfe, and ſhall take ſureties, and make returne therof (only) without any other.

The forme of a Warrant for the peace, vpon a *Supplicauit*: ſee *poſtea tit. Warrants*.

Alſo the ſame Iuſt. of peace after ſuch ſurety taken may make the partie a *Superſedeas* to diſcharge him from any other arreſt, or to deliuer him being in priſon, for the peace (at any other mans ſuite as it ſeemeth) *Cromp.* 237. *b.*

The forme of ſuch *Superſedeas*: ſee after *tit. Preſidents*.

21. H. 7. Br. Peace. 9. The party who is attached vpon this writ of *Supplicauit*, cannot goe to be bound before any other Iuſt. of P. but onely before him from whom the warrant proceedes vpon this writ; neither can another Iuſt. of peace (by a *Superſedeas*) diſcharge ſuch a warrant made by his fellow Iuſtice, by force of this Writ.

9. E. 4. 32. F. fx. Imp. 4. The Iuſtice or Sheriffe to whome this Writ ſhall bee deliuered, may make a Deputie heerein, *ſc.* may make his Warrant to the Conſtable or other perſon indifferent, to cauſe the partie to come before him to finde Sureties, &c. And that if hee ſhall refuſe, that then the Conſtable, &c. ſhall carrie him to priſon,

priſon, there to remaine vntill hee ſhall finde ſureties; And yet the Writ of *Supplicauit* is to commit the partie to the gaole if he ſhall refuſe before the Iuſtices (*Si coram vobis, vel te, recuſauerit, &c.*)

If the partie ſhall make reſiſtance vpon the execution of this Writ, it ſeemeth the Officer may take *poſſe Comitatus*, to ayd him to arreſt ſuch partie: ſee *poſtea tit. Poſſe Comitatus.*

Hee that is to bee bound to the peace by force of this Writ of *Supplicauit*, out of the Chancery, is to be bound againſt him only, that ſueth out the Writ (as appeareth by the forme of the Writ aforeſaid.) Fitz.N B.80.d.

But yet at this day it is vſed otherwiſe: And I once receiued out of the Chauncery a ſpeciall Writ of *Supplicauit*, directed *Cuſtodibus pacis, ac vic. & eorum cuilibet*, commanding vs to take ſureties of the partie to be bound, *quod ipſe damnum vel malum, aliquod alicui de populo noſtro, & inprimis eidem Iohan. &c.* that ſued out the Writ, *non fac. nec fieri procurabit, &c.*

Alſo by this Writ of *Supplicauit*, the partie (againſt whom the Writ is ſued foorth) ſhall be bound to the peace for euer, (if hee be taken) for the Writ containeth or mehtioneth not that he ſhal bee bound to keepe the peace vntill any certaine time; but generally (*ad ſufficientem ſecuritatem inueniend. ſub pœna, &c.*) And therefore to preuent this, the partie (before he be attached) may come into the Chauncery, and there finde ſureties, and bee bound vntill a certaine day, that he ſhall doe no hurt &c. vnto the partie that ſued forth the *Supplicauit*: and thereupon he ſhall haue a *Superſedeas* out of the Chauncery, directed to the Iuſtices of peace, and to the Sheriffe, commaunding them to ſurceaſe to arreſt the ſaid partie, or to compell him to find any ſureties, &c. And that if they haue arreſted him for this cauſe, and none other, that then they deliuer him, &c. *Fitz.* 81 *a.* Fitz.N.B 81.a.

And if the partie againſt whom this Writ is ſued forth, cannot trauell, (or elſe will not trauel) to binde himſelfe in the Chancery, then hee may cauſe ſome of his friends to bee bound, or to finde ſureties in the Chauncery for him according to the *Supplicauit*, and thereupon they may purchaſe a *Superſedeas* out for him, directed to the Iuſtices of peace, and to the Sheriffe; and by this *Superſedeas* the Iuſt. and Sheriffe ſhall bee commaunded to take alſo ſuretie, of the partie himſelfe in the countrey (according to the Writ of *Supplicauit*) that he ſhall keepe the peace &c. Fitz.N.B 81.a. Crompt.144.

Alſo if the partie happen to bee arreſted, and impriſoned vpon this Writ, yet if he can procure a *Superſedeas* out of the Chancery, it ſeemeth (by the wordes in the end of the *Superſedeas*, that this will diſcharge him of the arreſt, or impriſonment.

Now

Now after the partie is arrested & imprisoned (vpon this writ) the meanes for him to procure a *Superſedeas* out of the Chauncerie, muſt be;

1 Either to get ſome of his friends to be bound in the Chauncery for him and they to get a *Superſedeas*, *vt ſupra*.

2 Or elſe to get a Certificate to the Lord Chauncellor from three or foure Iuſtices of peace in this behalfe, *vt hic pag. ſequente*.

Fitz.N.B.79.h Lambt.86. This Writ of *Supplicauit*, is granted (or to be graunted) in the Chauncery, or Kings Bench, vpon great cauſe ſhewed and proued there; and is (or ought to be) granted vpon oath, that the partie is in feare, &c. of ſome bodily hurt, &c.

Co.8.37. And it is to bee wiſhed, that in the graunting thereof great care bee taken; For oftentimes this Writ of *Supplicauit* is procured and gotten out rather of malice and for vexation, then vpon any needfull and iuſt cauſe; And Sir *Edward Coke* ſpeaking of ſuch as malicioufly ſhall purchaſe out any ſpeciall *Supplicauit*, or *Latitat* of the peace, (and that by fraud and malice to enforce the other partie, *ad redimendam vexationem*, to giue them money, or to yeeld them other compoſition) brandeth them as Barrettors, and notable oppreſſors of their neighbors, oppreſſing therby the poore and innocent by colour and countenance of Law, which was ordeined to protect the innocent from all oppreſſion and wrong: Neither is this a wrong onely to the partie thus malicioufly vexed, but alſo to all the Iuſt. of P. reſident in that countie, taxing them (*tacite*) as though the demandant could not haue Iuſtice at their hands in ſuch caſe, whereas perhaps the demaundant neuer ſo much as deſired the ſame at any of their handes; And beſides the ſaid Iuſtices of peace (hauing in all likelihood, knowledge of each partie, and of their behauiours) or any one of them, might and would no doubt, yea and ought to haue yeelded the demandant vpon requeſt and iuſt cauſe ſhewed to them, as ſufficient and good ſecuritie in the countrey, euery way (as I conceiue it) for his ſafetie; as namely, as many and able ſureties, and better knowen, and to haue bene bound in as great ſummes, and for as long time, if the caſe ſhould ſo require; So as what ſhould moue them to ſeeke (with more trouble, charge, and delay to themſelues) that ſecuritie aboue, which they may haue (more ſpeedily, and with leſſe charge, and trouble, at home, I ſee not but onely or chiefly the vexing and oppreſſion of their neighbors as aforeſaid; And for that this maner of oppreſſion beginneth to grow ouer common, therefore I thought it not amiſſe, here to obſerue what remedy the Iuſtices of peace in the Countrey (by ſome opinions) may by their diſcretion yeelde to their innocent

See more before in this title.

cent neighbours, against whom for vexation onely, such a Writ shalbe maliciously procured, *&c.*

Where one hath procured a *Supplicauit* out of the Chauncery or Kings Bench, against another, if he hath not before demaunded this suretie of the peace at the hands of some Iustice of peace in the countrey; Or that the partie against whom hee hath procured the *Supplicauit*, be one of such condition and sort, as that in likelihood the Iustices of peace in the Countrey, will not deny to graunt such suretie against him; Then if three or foure of the next Iustices of the peace in the Countrey, shall certifie to the Lord Chauncellor (if the *Supplicauit* proceeded out of the Chauncery) that the partie plaintiffe neuer demaunded the peace in the countrey, and further that the plaintiffe is a contentious man, and the other partie of good fame; vpon such certificate (it is said) they will discharge the partie, or grant him a *Supersedeas.*

Now to conclude this businesse; If the suretie of the peace be taken, by vertue of a *Supplicauit*, then must the Iustice of peace make returne of the writ, and certificate of his doings vnder his seale into the Court from whence the *Supplicauit* did proceede, which may be done in this manner:

The returne of the Suppl. First, let him write vpon the backe of the *Supplicauit*, thus.

Executio istius breuis, patet in quadam schedula huic breui annexa.

Then may the Certificate or Schedule be thus; and be filed to the backe of the Writ.

The Certificate. *EGo Iohannes Cotton Miles, vnus custodium pacis Domini Regis in Comitatu Cantebridgiæ certifico in Cancellariam dicti domini Reg. me virtute istius breuis (mihi per A.B. in eodem breui nominatū primo deliberati) personaliter coram me (tale die & loco) venire feciſſe T.R. in dicto breui nominatum, ac eumdem T. ad sufficientē securitatem, & manucaptores pacis inueniendum secundum formam dicti breuis, viz. &c.* (as the writ shall appoint) *compulisse. In cuius rei testimonium huic præsenti certificationi meæ sigillum meum apposui, datum apud C. prædictam, in comitatu prædicto 16. die Ianuarij, Anno Regni dicti Domini nostri Iacobi Dei gratia Regis, &c.*

The returne of a Certiorari, The Iustice of peace may also therewith send the Recog. if he will, or may keepe and stay the Recog. vntill a *Certiorari* come to him for it.

And of the Recog. And if a *Certiorari* be directed out of the Chancery to the Iust. of peace for remouing of this Recog. (because it was not sent vp together with the certificate, as there was no necessitie that it should) Then that Writ also may be thus answered.

Write

Write vpon the backe of the *Certiorari*, thus;

Lib.Intr.453. *Virtute istius breuis ego* Iohan. Cotton *miles vnus custodum pacis domini Regis in Com' Canterbr. tenorem securitatis pacis, vnde infra fit mentio, dicto dom. Regi in Cancellar. suam sub sigillo meo distincte et aperte mitto, prout patet in Schedula huic breui consuta.*

And then write the Recogn. *verbatim*, in this manner hereunder following, and thereto set your seale. *The Schedule, or Certificat.*

Memorandum quod 16. die Ianuarij &c. (reciting the whole Recogn. to the end) *In cuius rei testimonium ego prædictus* Iohannes Cotton *sigillum meum apposui. Datum, &c.*

And fyle this schedule (or note of the Recogn.) to the backe of the *Certiorari*.

The forme of this *Certiorari* you may see *Fitz. N. Br.* 81. c. *Vide postea tit. Certiorari.*

Also this forme of Certificat, may serue where a *Certiorari* is Fitz.N.B 81.c. brought to a Iust. of P. to remoue a Recogn. of the peace taken by him *ex officio*, without any Writ of *Supplicauit*. See more *antea sub hoc tit. Suertie, &c.*

And if the Iustice of Peace shall not returne the *Suppicauit*, nor Fitz.N.B.81.b. Certificat of his doings therein, vntill a *Certiorari* come to him for it, it seemeth no danger to him.

Also if the *Supplicauit* be against diuerse, and the demaundant *Release.* will release his prayer of the peace against one of them, then that Lambt.111. release ought to be certified for him; and the Writ must be serued and executed for the rest: or else, *Non est inuentus*, may be certified for him, and the Writ executed for the rest.

By the Booke 30. *Assisarum placito* 14. it appeareth that a man may be compelled to finde suerties both for the good Behauior, Br.Suertie.11. and for the peace: and yet it seemeth that the good Behauior, in-2.H.7.2.b. cludeth the peace, & that he that is bound to the good Behauior, is therein also bound to the peace. See the vsuall formes of both Recognisances.

But if the Recogn. taken for the good Behauior, bee onely *quod bene se geret, &c. Quære* how farre those words will extend, See 2. *H.* 7. 2. b.

Suertie for the good Behauior.

THis ſuertie for the good Behauior (or good abearing) is graunted by the Iuſtices of Peace, aſwell by authority of the Commiſsion of the P. the firſt *Aſsign.* as alſo by force of the ſtat. of 34. *E.* 3. *ca.* 1. P. Iuſt. 18.

And this ſuertie for the good Behauior is of great affinitie with that of the peace; and is prouided and ordeyned chiefly for the preſeruation of the peace (as that other is,) as you may obſerue out of the vſuall formes of the Recogniſances; yea by ſome opinions it differeth in little or nothing from that of the P. but that there is more difficultie in the performance thereof; and the partie ſo bound may ſooner fall into the danger of it, and of his Recogn. For the peace, ſay they, is not broken without an Affray committed, batterie, aſſault, impriſoning, or extremitie of menacing; whereas the good Abearing may be broken (and the parties Recogn. forfeited) without any of theſe, as namely, Lambr. 119. PR. 18. 2. H. 7. 2.

Vide antea tit. Suertie for the Peace, and forfeiture of Recogniſance.

1 By the extraordinarie number of people attending vpon the partie bound;

2 Or by his wearing of Harneis, or other weapons more then vſually he hath done, or more then be meet for his degree.

3 Or by vſing words or threatnings, tending or inciting to the breach of the peace; PR. 22.

4 Or by doing any other thing which ſhal tend to the breach of the peace, or to put the people in dread or feare, althogh there be no actuall breach of the peace.

Yet note, theſe foure laſt matters, as they are breaches of the good Abearing, ſo are they alſo cauſes to binde a man to the P. yea, they are breaches of the peace, and a forfeiture of the Recog. for the peace. *Vide vt ſupra.*

The booke 2. *H.* 7. *fol.* 2. concludeth, that the Iuſtices were not all certainely aduiſed how thoſe words, *de ſe bene gerendo*, ſhould be taken. Mr *Bro:* abridging thereof *tit. Suertie* 12. ſaith, That it was holden that he who is bound to the peace, ought to demeane himſelfe well in his part, (*ſc.* Behauior) and company, not doing any thing that may be the cauſe of the breach of the peace, or to put the people in feare or trouble: yet the Book ſeemes to meane this of the good Behauior.

But though this extraordinarie number of attendants, and wearing of Harneis &c. are a breach aſwell of the peace, as of the good Behauior, yet it may ſeeme that this, for the good Behauior, doth include the peace, and beſides importeth ſome greater or other

ther matters of misbehauior, and for which the ſuertie of the P. is not to be graunted (although they alſo are againſt the peace,& quiet or good gouernement of the land); and you ſhall finde *hic pag.*160.that this ſuerty of the good Behauior is grauntable in diuers other caſes,in which the ſuerty of the peace is not grantable.

This ſuerty of the good Behauior is to be graunted at the ſuite of diuers,and thoſe being men of credite, and to prouide for the ſafetie of many; whereas the ſuerty of the peace is vſually graunted at the requeſt of one, and for the preſeruation of the peace chiefly towards one.

Alſo this ſuertie of good Abearing,is moſt commonly graunted either in open Seſſions of the peace; or out of the Seſſions by two or three Iuſtices of peace,whereas that of the peace is vſually graunted by one Iuſtice of Peace and out of Seſſions.

14.H.7.8.a. Lambt.123. And yet by the words of the Commiſſion,as alſo by the common opinion of the learned, any one Iuſtice of peace alone, and out of the Seſſions,may grant this ſuertie of the good Abearing; and that either by their owne diſcretion, or vpon the complaint of others (as they may that of the peace.)

But this is not vſuall, vnleſſe it be to preuent ſome great and ſudden danger; (eſpecially againſt a man that is of any good eſtate,carriage,or report.)

Alſo this ſuertie may bee graunted at the ſuit of ſome one perſon.

But the more difficult and dangerous this ſuerty is to the party bound,the more regard there ought to be taken in the graunting of it: and therefore it ſhall be good diſcretion in the Iuſtices of P. that they doe not commaund, or graunt it, but eyther vpon ſufficient cauſe ſeene to themſelues, or vpon the ſuit and complaint of diuers others,as aforeſaid, and the ſame verie honeſt and credible perſons.

Alſo this ſuerty of good Abearing,is often taken by the Iuſtice of peace, by vertue of a ſpeciall Writ in the nature of a *Supplicauit*,directed out of the Chauncerie,or Kings Bench; and then the Iuſtice of Peace vpon ſuch a Writ,is to proceed as a Miniſter,(as in caſe for the peace, *mutatis mutandis.*) *Vide antea tit. Suertie for the Peace and Supplicauit.* *Supplicauit.*

I once receiued out of the Chancerie,ſuch a Writ directed *Cuſtodibus pacis in Com' Cantebr. ac vicecomiti eiuſdem com': et eorum cuilibet* (and grounded vpon the ſtat. 34. *Ed.*3.) commanding vs and euery of vs,to take foure ſuerties (beſides the party) whereof euerie one ſhould haue lands of ſuch a yearely value, or goods of ſuch a value,and to binde the ſuerties euerie one in ſuch a ſumme, and the partie in ſuch a ſumme, *Quod ipſe bonis geſtus de cætero erit,*

erga nos & cunctum populum nostrum, & quod nihil in contrarium statuti prædicti attentabit &c. And therin I proceed as a Minister only.

For what cause this Suertie for the good Behauior shalbe granted.

1 IT is chiefly to be graunted in these fiue Cases following, *viz.* First, against common Barretters, common Quarrellers, and common breakers or perturbers of the peace. See what Barretters be, *titulo antea Barretters.*

2 Also it is grantable against Ryotters. See hereof before *tit. Ryotts.*

3 Also against such as shall lye in waite to robbe, or shall be suspected to lye in wait to robbe, or shal assault or attempt to rob another, or shall put passengers by the way, in feare or perill. P.Iust.18.

4 Also against such as be generally feared (or suspected) to be robbers by the high-way.

5 Also against such as are like to commit murder, homicide or other grieuances to any of the Kings subiects in their bodies. Cromp.135.b.

Also against such as shall practise to poison another.

I lately granted the good Behauior against one, for that he had bought Rattisbane, and mingled the same with Corne, and then wilfully & malitiously did cast the same amongst his next neighbours fowles, wherby most of his fowles died; and it was holden to be a good cause to bind the offendor ouer, by the whole Bench.

It is also grauntable against such as be of euill name and fame generally, but more specially against all such as are defamed or detected in any of these particulars following. P.Iust.18.

1 First, against those that are greatly defamed for resorting to houses suspected to maintaine Adultery, or Incontinencie. 13.H.7.10.

2 Also against the maintainers of houses commonly suspected to be houses of common Bawdrie.

One that had such lewd women found in his house was bound to his good Behauior, (by *Wray*, *Anderson*, and *Manwood.*) 28.*Eli.* Cromp.140.

3 Also against cõmon Whoremongers, & common whores; for (by good opinion) Auowtry or Bawdry is an offence temporall, aswell as spirituall, and is against the peace of the land. 1.H.7.7. 27.H.8.14.b.

Vpon information giuen to a Constable, that a man & a woman be in adulterie, or fornication together, (or that a man & a woman of euill report, are gone to a suspected house together, in the night) the officer may take companie with him, and if he finde them so, hee may carrie them to prison, or hee may carry them before a Iustice of Peace, to finde suerties for the good Behauiour. 13.H.7.10. Br.Trauerse 432.

4 Also against night-walkers that be suspected to be pilferers,

ferers,or otherwiſe like to diſturbe the peace,or that be perſons of euill Behauior,or of euill fame or report generally, or that ſhall keepe companie with any ſuch,or with any other ſuſpicious perſons in the night. 13: *H.*7.10.

Againſt ſuch as by night ſhall eueſdrop mens houſes.

Againſt night-walkers that ſhall caſt mens Gates or Carts,&c. into ponds,&c.or ſhall commit other like miſdemeanors or outrages in the night time.

5 Againſt ſuſpected perſons,who liue idly and yet fare well, or are well apparrelled, hauing nothing whereon to liue, (except vpon examination, they ſhall giue a good accompt of ſuch their liuing.)

6 Againſt common haunters of Alehouſes,or Tauernes,but more eſpecially if they haue not whereon to liue.

7 Againſt common Drunkards; but now by the Statute 4.*Iacob.*5.it ſeemeth ſuch offendors muſt be therof twice lawfully conuicted.

8 Againſt ſuch as ſhall vſe to goe in the meſſage of Theeues. See Stat.18.*E.*2. *P.Leete.* 1.

For all theſe former offendors, and the like, are euill members in the common-wealth,& ſuch their demeanor & liuing is greatly to be ſuſpected (& beſides do ſeeme to be more properly ſaid againſt the peace of the land, then *Auowtry*, in the caſe before.1. *H.*7.7.) and therefore it ſeemeth reaſonable, iuſt and expedient that the Iuſtices of Peace (vpon their diſcretion) ſhould conuent ſuch perſons before them, and examin them and their courſes of life: and if they cannot yeeld a good reaſon and accompt of ſuch their courſes,then to binde them to their good Behauior.

Alſo the good Behauior ſeemeth grauntable, againſt ſuch as ſhall make falſe outcryes, or ſhall raiſe Hue and Cryes without cauſe; for theſe are diſturbances of the Peace. *Cromp.*179.

If one man doth leuie Hue and Crie vpon another without cauſe,either of them may be attached (and bound ouer) as diſturbers of the Peace. *PR.*156.

Alſo it ſeemeth againſt Cheaters and Coſiners.

See Co.5.125. PR.1,2. Libellers (it ſeemeth) alſo may be bound to their good Behauior,as diſturbers of the peace,whether they be the contriuers,the procurers,or the publiſhers of the Libell: for ſuch libelling and defamation tendeth to the rayſing of quarrells, and effuſion of bloud,and are ſpeciall meanes and occaſions, tending and inciting greatly to the breach of the peace.

Alſo this ſuertie of the good Behauior, is vſed to be graunted againſt the *Putatiue* father of a Baſtard child. *Vide antea titulo Baſtardie.*

It ſeemeth alſo grauntable againſt vnlawfull Hunters in Parks, after their examination taken, *vide antea tit. Hunting.*

Alſo it ſhall be graunted againſt him that ſhall abuſe a Iuſtice of Peace (Conſtable, or other Officer of the Peace) in executing their office.

A Iuſtice of Peace ſeeth a man breake the Peace (*ſc.* to make an Aſſault, or Affray vpon *A.*) and he chargeth him to keepe the peace, and the other anſwereth that he will not; the Iuſtice of P. may binde him to the good Behauior. 9.E.4.3.

For if (as one ſaith) contempt, or contumely, vſed to the perſon of a mans better, neyther Policie for example, nor Religion for peace, may tolerate, much leſſe to vſe contempt towards, or to abuſe ſuch as are in authoritie, eſpecially when they are in executing their office. See Exod. 22. 28.

Nay, it ſeemeth that he which ſhall vſe words of contempt, or *contra bonos mores*, againſt a Iuſtice of peace, though it be not at ſuch time as he is executing his office, yet he ſhall be bound to his good Behauior.

If a Citizen or Freeman of a Citie or Towne corporate, ſhall vſe wordes of contempt, or *contra bonos mores*, againſt the chiefe Officer of the Citie or town, or his brethren, they are good cauſes to commit him to priſon vntill he ſhall finde ſuerties for his good Behauior: for obedience and reuerence ought to be yeelded to the Magiſtrate, for that they deriue their authoritie from the king; and *obedientia, eſt legis eſſentia.* Co. 11. 93.

Alſo he that ſhall abuſe a Iuſtice of Peace his Warrant, may be bound to his good Behauior. *Vide poſtea tit. Warrants.*

A man complaineth of a Ryot, or Forcible Entrie, ſo that the Iuſtices of Peace are aſſembled to Enquire thereof, and then the partie that complained will not proſecute the matter; it ſeemeth the ſaid Iuſtices of peace may binde him to his good Behauior, for his deluding them.

And ſo of ſuch as ſhall charge another with Felonie before a Iuſtice of P. and yet will not giue euidence, &c. *Vide antea tit. Felonie circa init.*

A. is bound to keepe the peace againſt *B.* onely, and getteth a *Superſedeas*, and after *B.* releaſeth him; after *A.* is arreſted for ſuertie for the peace at another mans ſuit, and ſheweth this firſt *Superſedeas*, it ſeemeth he ſhall be bound to his good Behauior for this deceipt. Cromp. 134.

By Statute. Alſo by the expreſſe words of the Statutes, the offendors hereunder named ſhall be bound to their good Behauior.

1 Diſturbers of Preachers. 1. *M.* 3. *P.* 1:

2 Deſtroyers of Fiſh-ponds, &c. or ſtealers of Fiſh, (after lawfull

lawfull conuiction,&c.) 5.*Eliz.*21.

5.Eliz.21. 3 Takers of Hawkes, or Hawkes egges out of other mens grounds, after lawfull conuiction,&c.

3.Iac.13. 4 Vnlawfull ſtealers,hunters, or killers of any Deere or Conies in the night time,in any Parke or Warren, after lawfull conuiction,&c.

But all theſe former offendors,muſt be bound at the Seſſions.

5 Popiſh Recuſants, abſenting themſelues from Church twelue moneths ; theſe ſhall bee bound in the Kings Bench. 23.*Eliz.*1. *P.Recuſants.*1.

10.E.3.3. P.Pardon.5. 6 He that hath a Pardon for any felonie, ſhall finde ſuerties for his good Behauior ; but he ſhall be bound before the Sheriffe and Coroners.

Alſo he that is acquited of felonie,if he be of euill fame,or of euill Behauior,it ſeemeth the Iuſtices of peace vpon their diſcretion,may binde him to his good Behauior.

39.El.4. 7 Such perſons as ſhall diſturbe the execution of the ſtatute 39.*Eliz.*4. concerning the puniſhing, or conueying of Rogues ; any two Iuſtices of P. may binde them to their good Behauior. *Vide antea tit. Rogues.*

8 So of ſuch as ſhall diſturbe the execution of the ſtatute, for the reliefe,ſetting on worke,or ſetling of the poore. *Vide antea tit. Poore.*

7.Iac.4. 9 The mother of a Baſtard childe(which may be chargeable to the Pariſh) for her ſecond offence ſhall be committed to the houſe of correction, there to remaine vntill ſhe can put in ſuerties for her good Behauior, &c. *Vide antea tit, Baſtardie.*

10 Such as haue their houſes, or be themſelues infected with the Plague,and being commaunded to keepe their houſes, ſhall diſobey,&c. they ſhall be bound to their good Behauior,for one whole yeare. *Vide antea tit. Plague.*

What Act ſhall be a forfeiture of the Recogn.taken. See hereof a little before.

Lambt.122. Alſo it ſeemeth, that the partie bound to his good Behauior for offending againſt any the ſtatutes here before mentioned,if he ſhall afterwards offend againſt any the ſaid ſtatutes, he ſhall therby forfeit ſuch his Recogniſance.

The forme of a Warrant for the good Behauior. *Vide poſtea tit. Warrants.*

The forme of the Recogn.for the good Behauior. *Vide poſt. tit. Recogniſances.*

Lambt.126. Whether the ſuertie of the good behauiour (taken vpon complaint) may be releaſed by any ſpeciall perſon ; ſome doe doubt it,becauſe it ſeemeth more popular then the ſuertie of the Peace, *Releaſe.*

yet

yet others doe hold that it may be releaſed, either by the Iuſtice of Peace himſelfe that tooke it in diſcretion, or by the partie vpon whoſe complaint it was graunted, euen as that for the peace may. PR. 22.

Superſedeas. It ſeemeth alſo a *Superſedeas* of the good Behauior may be graunted by the Iuſtices of Peace (as well as for the Peace, *mutatis mutandis*) vpon good ſuerties taken by the ſaid Iuſtices of the partie to be of good Behauior. Cromp. 237.

Certiorari. If a man be bound to the good Behauior (before Iuſtices of Peace) and to appeare at the next Aſſiſes or Seſſions, yet the partie bound may by a *Certiorari* remoue the Recogniſances (into the Chancerie, or Kings Bench) before the day, and then he ſhall not need to appeare at the Aſſiſes, or Seſſions; for they ſhal haue no Record, wherupon he may be called there. Crom. 146.

Forcible

Forcible Entrie, and Forcible Deteyner.

Lambt.138. Cromp.67. THe Common Law (being the preſeruer of the common peace of the land) hath alwaies abhorred force as the capitall enemy thereto. *Co.*3.12. And yet, before the Reigne of king RICHARD the ſecond, the Common Law ſeemed to permit any man to haue entred into lands & tenements with force and armes, and alſo to haue kept and deteyned them with force, where his entry was lawfull.

And at this day, if a man doth enter with force, (or multitude of people) where his entrie is lawfull, he is not puniſhable by action, eyther at the Common Law, nor (by action) vpon any ſtatute; for where the title of the plaintiffe is not good, there he hath no cauſe of action, although the defendant doth enter with force: but in ſuch caſe he that entreth with force muſt be indicted vpon the ſtatute; or otherwiſe complaint may be made therof to the Iuſtices of Peace, and aſwell vpon ſuch indictment, as vpon ſuch complaint, the offendor ſhall be puniſhed, yet the partie *(ouſted)* ſhall not be reſtored without indictment. *Vide antea tit. Forcible Entry.*

11.H.7.17. Br.Force 11.

And for the better reſtreyning of ſuch Force and Forcible Entries, and to inflict condigne puniſhment vpon the offendors therein, it was firſt prouided by the ſtatute 5. *R.*2. that no man ſhould enter into any lands or tenements, with force or multitude (though he had good right, or title to enter.)

5.R.2.cap.7.

But this ſtatute prouided no ſpeedie remedie, nor extended to holding with force, nor gaue any ſpeciall power therein to the Iuſtices of Peace; and therefore by another Statute made 15. *R.*2. it was further prouided, that if any man ſhould deteyne (or hold) with force, after ſuch Forcible Entry made; vpon complaint thereof, he ſhould be impriſoned by the Iuſtice, &c.

15.R.2.cap.2.

Yet neyther of the former Statutes extended to thoſe that entred peaceably, and then held with force; and therefore by the Statute 8. *H.*6. it was and is prouided that no man ſhall enter with force, nor deteine (or hold) with force (generally.)

8.H.6.cap.9.

Now theſe two laſt Statutes of 15. *R.*2. and 8. *H.*6. doe enable any one Iuſtice of peace to giue preſent remedie, *viz.* to remoue the force, and commit the offendors in caſes of Forcible Entry, or holding againſt the aforeſaid Statutes.

Alſo the Statute of 8. *H.*6. extendeth further, reaching the offendors,

offendors, if they were remoued before the comming of the Iuſtices, giuing the Enquirie & Reſtitution; and alſo puniſhing the Sheriffe that ſhall not obey the precepts of the Iuſt. in this behalfe.

So that theſe ſtatutes doe now giue full remedie, and do prohibite, and are made againſt theſe three degrees or ſorts of force, *viz.*

1 Such as enter peaceably, and then hold forcibly. Fitz. 248. & Lambe. 143.

2 Such as enter with force, and then hold peaceably.

3 Such as doe both enter forcibly, and hold forcibly.

I haue (here before) alreadie ſhewed in ſome meaſure how the Iuſtice of Peace ſhall demeane himſelfe in the execution of theſe ſtatutes; now I will proceede to giue him ſome further light in this buſineſſe, in theſe particulars following.

1 Firſt, what is a forcible Entrie, and what is a forcible holding, within the meaning of theſe ſtatutes.

2 Who may commit a Forcible Entrie, &c. And vpon whom.

3 Where a force, or forcible holding, is iuſtifiable or lawfull.

4 What, and how many ſeuerall remedies the party hath, that is ſo put out, or kept out of his poſſeſſions.

5 The maner of proceeding of the Iuſt. of P. by Enquirie.

6 Of Reſtitution to bee made to the partie ſo put out; by whom, and to whom.

7 What cauſes there may be for ſtaying the Iuſtice of peace from making Reſtitution.

What is a Forcible Entrie, or holding, within theſe Statutes.

OVr Law taketh knowledge of two maners of force; the one may be termed a force in iudgement of Law, which accompteth euerie priuate treſpaſſe to be a force; ſo as if I doe but paſſe ouer another mans ground without licence, he may haue his action of treſpaſſe againſt me, *Quare vi et armis &c.*

The other maner of force is more apparant, and alwayes carieth ſome fearefull ſhew, and matter of terror with it.

This laſt ſort of force is that which is prohibited by theſe ſtatutes: and therefore note that euerie force, puniſhable by theſe ſtatutes, muſt (haue one of theſe two badges, *ſc.* it muſt) be eyther *Manuforti*, or *Multitudine. Lambt.* 145.

Manuforti, ſc. either with apparant violence (in deed, or word) offered to the perſon of another, as threatning ſpeeches, turbulent behauior, or actuall violence; or elſe that they be furniſhed with offenſiue weapons (by them not vſually borne,) and this may be done by one perſon onely. *Vide poſtea ſub hoc tit.*

Multitudine.

Multitudine, &c. with companie more then vsually they haue attending on them, 10.*H.*7.12. The Law properly calleth it a multitude, when there be three or moe in one companie.

Lamb.146. If therefore one, or moe persons shall come weaponed (especially with weapons not vsually borne) to a house or land, and shall violently enter thereinto, this is a forcible entry within the meaning of these Statutes. *Forcible Entry.*

Much more if (being so entred) he or they shall there offer violence, or feare of harme, to the person of any that is in possession thereof; most of all, if he or they shall forcibly and furiously expell and driue another out of such his possession.

So is it, if one shall enter peaceably (the doore being open, or onely latched,) and after he is in the house, he shall forcibly put another out of his possession.

So is it if he or they, that shall enter peaceably, shall after their entrie offer apparant violence, threatnings, or feare of harme, to the person of any that is in possession, to the intent to get him out, and to make him leaue the possession, though they doe not put him out of possession; much more if they get the possession thereby.

If he or they that haue entred peaceably, shall after vse words to any in possession to this effect, as to say they will hold, or keep it, though they die for it, or in spight of the other, or such like, or other threatning words: this maketh it a forcible entry.

Lambt.146. Cromp.69. So is it, if diuers persons shall come with weapons (not vsually borne by them) to a house that is open, or to ground, and shall there enter peaceably, without any disturbance, yet this is a forcible entrie, for it shall be intended that they would haue vsed force, if they had beene resisted.

10.H.7.12. So is it, when the Master entreth into an house, or land, being attended with a greater number of seruants then vsually do waite vpon him.

Lambt.146. Note, that though a man do actually vse no force in his entry, yet if he doe come so appointed, either with weapon, or companie, that other men may be reasonably afraid, that he mindeth to make his way by force, rather then he will faile of his purpose, it seemeth to be a forcible entry.

Also it seemeth that euerie entry into another mans house or ground wch is made with force (*sc. Manuforti*, or *cũ Multitud.* either with apparant violence offered to the person of any other, or furnished with weapons, or company, wch may offer feare) though it be but to cut, or to take away another mans corne, grasse or other goods, or to fell or crop wood, or to doe any other like trespasse, thogh he do not put the party out of his possessiõ, yet it seemeth to be *A Trespasse.*

be a Forcible Entrie punishable by these statutes. See *Lambt.* 145.

But if the Entrie were peaceable, and after such Entrie made, they cut or take away any other mans Corne, Grasse, Wood, or other goods, without apparant violence, or force, though such actes are accompted a disseisin with force, yet they seeme not to be punishable by these Statutes, *sc.* the Iustices of P. are not to remoue, imprison or fine such offendors. Lambt. 145.

Also if one or more shall enter into another mans house or land peaceably, and after his or their Entrie shall by force or violence, cut, or take away any Corne, Grasse, or Wood, &c. or shall forcibly and wrongfully carrie away any other goods there being; this seemeth to be a forcible entrie, punishable by these stat. Cromp. 70. 11. H. 4. 16.

So is it if a man shall distraine with force, for a Rent (bee it due, or not due) this doeth counteruaile an Entrie with force. *Lambt.* 147.

And in these cases of Trespasse onely, the Iustice of P. (vpon complaint to him made) may, as it seemeth, remoue such force; and vpon view thereof, may imprison and fine such offendors.

By words. If a disseisor hath entred peaceably, and being entred shal presently threaten to kill the disseisee (if he Reenter) this seemeth a forcible entry, in the disseisor. See more *postea Sub hoc tit.*

But note, that a Forcible Entrie, cannot be without an actuall entrie, for the words of the statutes be, whosoeuer doth enter, &c. 2. H. 7. 16. Br. Fac. 25.

Note also, if one that hath right to enter vpon land, shall goe with diuers in his company, & with weapons ouer the land wherto he hath right, to the Church, Market or some other place, this is no entrie with force, except hee shall expresse his intent, that hee doth enter there, claiming the land. Cromp. 70.

Note also, that if a man shall enter with force (into house or land) although he obteyneth not, nor getteth the actuall possession thereby, yet shall he be imprisoned and fined for the only entring with force (as it seemeth,) see the Statute: but Restitution is not to be made, but onely where there is a putting out, and a holding out of another out of his possession.

Lawfull. If by faire meanes, a man (whose entry is lawfull) shall perswade or intice them which are within the house, to come out; & then (the doore being open, or shut by the latch onely) hee shall enter peaceably, without multitude, offensiue weapons, or other violence: this entrie seemeth to be iustifiable.

So is it, if he shall enter peaceably, and then by gentle perswasions can send them out, that are within the house, & after shutteth the doore, & keepeth them out; this seemeth iustifiable, so that afterwards he holdeth it not forcibly, nor vseth violence or threatning speeches.

So

Lamb.149. So it is, if I ſhall take a man being out of his houſe, and then I doe put or ſend into the houſe, my ſeruant (or ſome other) in peaceable maner, and doe hold away the other by impriſonment of his perſon; this is no forcible entrie, nor deteiner within theſe ſtatutes, but a falſe impriſonment puniſhable by action onely.

So it is, if he whoſe entrie is lawfull, ſhall enter peaceably into his houſe (the doores being open, or ſhut by the latch onely) and being ſo entred, ſhall continue and abide there peaceably, this is iuſtifiable, And if they which were before in poſſeſſion, ſhall put or thruſt him out forcibly; this is a forcible deteiner of their parts. See more hereof *ſub hoc tit. poſtea.*

Lamb.149. Forcible deteiner, muſt be vnderſtood of a forcible deteining of the poſſeſſion of landes or tenements, and not of the perſon of a man, as before. *Forcible Deteiner.*

Note alſo, though the Entrie were at the firſt peaceable, and lawfull, yet if there be after a holding by force, it is puniſhable by the ſtatute, Except where there was at the firſt a lawfull and peaceable Entrie, and thereupon a lawfull poſſeſſion, peaceably continued by the ſpace of three yeares together, without interruption; for there a man may holde and keepe ſuch poſſeſſion with force againſt all others (ſauing againſt the Kings officers.)

8.H.6.c.9. 1.Ed.c.4.

Lam.164.

Lamb.148. PR.41. Clomp.70. If the Iuſtice of peace ſhall come to the houſe, or place, that is ſuppoſed to be holden with force, and there ſhall find the doores or gate ſhut, and hee or they within ſhall denie him to enter, (or will not ſuffer him to enter) this is a forcible holding and deteiner, though there bee no weapons ſhewed or vſed, and though there be but one perſon in the houſe, or vpon the ground.

Ibid. So it is, if when the Iuſt. of peace entreth the houſe or ground, he ſhall finde there any perſons in harneis, or otherwiſe armed; or hauing harneis, armour, or other weapons (not vſually borne by them) lying ready by them.

Ibid. So it is, if the Iuſtice of peace ſhall find in the houſe, any great number of people, other then the ordinary family or company.

P.R.41. Alſo if a man ſhall enter peaceably into a houſe, and after ſhal bring into the ſame more weapons then hee and his ordinary family doe vſually weare; or ſhall make any vſe of ſuch weapons as he doeth finde in the houſe, to defend his poſſeſſion therewith; theſe are forcible deteiners within theſe ſtatutes.

Ibid. If a man that hath peaceably entred into an houſe, will beſtow men, with force (*ſc.* with harneis, gunnes, or other weapons) in ſome other houſe or place, not farre diſtant, to the intent that they may be ready to aſſault ſuch as ſhall enter vpon him; this is a Deteiner with force.

So is it, if the diſſeiſor of a houſe or land, ſhall foreſtall the way of the diſſeiſee, with force and armes, ſo that the diſſeiſee dareth not enter, or come neere thereto for feare of death, &c. Lambt. 149. Cromp. 69.

So is it, if a man ſhall keepe his cattell in another mans ground by force; claiming Common there, where hee hath no Common; And in this caſe, the Iuſtice of Peace vpon complaint to him made, may remooue this force; And vpon viewe thereof may record it, and may commit ſuch offenders to priſon, and may fine them therefore, as it ſeemeth, but cannot award Reſtitution. P.R. 39.

By words. Alſo there may be a forcible deteining of poſſeſſion by word onely, without any forcible act.

As if *A.* hath wrongfully (though peaceably) entred into the houſe, or vpon the land of *B.* and hath put out *B.* and ſhall preſently threaten, or ſay to *B.* that if hee doe come thither againe to enter, he will kill him. This ſeemeth a forcible entrie by *A.* And if *B.* ſhall afterwards come againe to make his entry, and then *A.* ſhall threaten to kill him if he entreth there, this is a forcible Deteiner in *A.* Lambt. 149. Cromp 70. P.R. 39.

And it ſeemeth, that to threaten, to maihem, beare, or to doe other bodily hurt to *B.* in the caſe aforeſaid, amounteth to a forcible Entry or Deteiner; for that death may enſue vpon ſuch beating or hurt. See 39. *H.* 6. 50. 7. *E.* 4. 21.

But to threaten to burne the houſe, or to ſpoile his goods therin, (if *B.* ſhal come thither, to enter again) this ſeemeth not to amount to any ſuch matter, for that *B.* may afterwards haue his action for the burning of his houſe, or ſpoiling of his goods, and ſhall therby recouer damages, to the value thereof, &c. 39. H. 6. 50. Br. Dures. 9. 12, 16.

Alſo when *B.* ſhall come to make his Entry as aforeſaid, if *A.* ſhall ſay to him, that he will not open the doore, this is no forcible deteiner. Cromp. 70.

So is it, if *A.* be in poſſeſſion of a houſe, or hath a leaſe thereof at the will of *B.* and after *B.* entreth into the houſe, and commandeth *A.* to go out, and to leaue him the poſſeſſion, and *A.* will not goe out; this is no force; for refuſing, or denying only to goe out, is no force, vnleſſe there be withal ſome forcible act or threatning ſpeeches: *vbi factum nullum, ibi fortia nulla*, where there is no fact, there is no force. *Co.* 4. 43. Cromp. 73.

A. morgageth his houſe to *B.* vpon condition, that if *A.* ſhall pay to *B.* ſuch a day fourtie pounds, then the ſaid morgage (and feoffement to be void, and by agreement of them both, *A.* the morgager continueth the poſſeſſion vntil the day of redemption, at which day *A.* payeth not the 40. pound, and after *B.* commeth to reenter, and *A.* keepeth the poſſeſſion by force, this is a deteiner by

by force in *A.* This was Maſt. *Rob. Godfreyes* opinion betweene *Willowes* and *Thurger.*

Cromp. 69. The diſſeiſor maketh a gift in taile to *B.* who keepeth the land with force at the time when the diſſeiſee maketh his claime, which claime is made within the view, ſo neere as hee dareth, for feare of death, battery, or other bodily hurt, if *B.* after ſuch claime, ſhall continue the poſſeſſion with force, hee may bee thereof indited, &c. for this is a new Entrie, and a Deteinor with force by *B.*

Litt 419.

And note, that whereſoeuer mine entry is lawfull, if the poſſeſſion be deteined or holden from me by force, I may pray the ayd of the Iuſtices of peace to remooue ſuch force, as it ſeemeth.

Lambt. 149. Cromp. 70. P.R. 39. If a man hath a Rent or Common of paſture out of another mans land, and comming to diſtreine for his Rent, or to vſe his Common, he is ſo forcibly reſiſted by the tenant of the land, that hee cannot, or dareth not, either diſtreine for his Rent, or take the benefite of his Common; This is a holding with force in the tenant, and puniſhable by theſe ſtatutes. *Rent.*

Cromp. 69. So it is, if the tenant of the land ſhall foreſtall the way with force and armes, or ſhal threaten him (that hath the Rent or common) ſo that he dareth not to come, to diſtreine for his Rent, nor to take his common.

Ibid. So it is, if a man ſhall diſtreine for his Rent, and the tenant of the land ſhall make reſcous with force and armes.

And in theſe caſes (of a Rent or Common) the Iuſtice of peace (vpon complaint to him made) may remooue ſuch force; and vpon view of ſuch force, may recouer it, and may therefore impriſon and fine ſuch offenders, but cannot award reſtitution, (*ſc.* cannot reſtore the partie to his Rent, or Common, which are to bee taken, and vſed in another mans land) for reſtitution is not to made, but onely of houſe or land, as you may ſee hereafter.

Lambt. 147 One perſon alone, may commit or make a forcible entrie, or deteiner, if ſo be he doe it with offenſiue weapons, or doe vſe turbulent behauiour, &c. to the affray of others. *The perſons.*

Cromp. 69. An Infant of the age of eighteene yeares, by his owne act, may commit a forcible entrie or deteiner: and ſo he may though he be vnder eighteene: But if an Infant commaundeth another to enter or hold, with force to his vſe, yet the infant ſhall not bee puniſhed for ſuch offence, for his commaundement therein was voyde.

Cromp. 69. 16. aſſi. 7. See in the title Riot. Alſo a *Feme couert*, (by her owne acte) may commit a forcible entrie or deteiner; And vpon the Iuſtices view of the force, ſhee ſhalbe impriſoned therfore, (and it ſeemeth alſo ſhe may be fined in ſuch caſe) But ſuch fine ſet vpon the wife, ſhall not bee

leuied vpon the husband; For the husband ſhal neuer be charged for the act or default of his wife, but when hee is made a partie to the action, and iudgement giuen againſt him and his wife. *Cok.9. 72. & Co.11.61.*

See more after in the title Riot.

Diuers doe enter with force to the vſe of *A.* who is not then preſent with them, but doth after agree thereto, this agreement after maketh *A.* to bee a diſſeiſor, but not to bee puniſhed for the force; *quære*, if A. had counſelled, conſented, or agreed thereto before the entry, it ſeemeth that a commaundement, conſent, or agreement before or after, though it may make one a diſſeiſor, yet it is not to bee puniſhed by the Iuſtice of peace, vpon theſe ſtatutes, for that a forcible entry cannot bee adiudged againſt a man, without an actuall entry be alſo made by him, or he at leaſt preſent.

2.H.7.16. Br.forc.15.

Conſent.

But if A. that ſhall command or counſell others thereto, ſhall alſo be preſent at the time of the entrie, although he doth then nothing, yet he is now become a principall, and puniſhable by theſe Statutes.

If diuers doe come in one company, to enter into landes, &c. where their entrie is not lawfull, and all of them (ſauing one) did enter, and demeane themſelues in peaceable maner, and one only doeth enter with force, or (after entrie made) doeth vſe force and violence, This ſhall be adiudged a forcible entry in them all, (although the force were againſt their wills;) For where diuers doe come in one company to any place, to the intent to doe any vnlawful thing, be it robbery, homicide, riot, affray, or any treſpaſſe, here the act of one of them ſhalbe adiudged the act of all of that part that are preſent, and euery one of them ſhall be adiudged a principall doer, although they ſtand but by and doe nothing; Soe it ſeemeth, though ſome of them came without any intent of euil, if they came together in company with the other offendors, or if they came after, yet if they be either aiding or countenancing to the offendors, they ſhall be alſo adiudged principall doers, as wel as the other.

Co.9.67.111. & 11.5.

See hereof after in the title Murder.

The perſons put out.

An Inditement vpon the ſtat. of 8. *H.6.* for the king, is not good; for the K. cannot be diſſeiſed, nor put out of his freehold; neither can the K. bring any action vpon the ſtat. of 8. *H.6.* nor any other action which might proue him out of poſſ. of the land. *P.R.39.b.*

Co.1.46. & 10.111.

And if the Kings termor bee put out by force, hee cannot preferre a Bill of Enditement (vpon the Stat. of 8. *H.6.*) that he was put out, and the King diſſeiſed; But he muſt haue an Information of Intruſion into the Eſchequer.

Cromp.69.

Yet it ſeemeth, that vpon complaint made to a Iuſt. of peace, by the Kings termor of any ſuch force, the Iuſtice of peace may, nay

may ought to remooue the force, and vpon his view thereof, to record it, and to commit the offenders to prison, and may fine them, and after such force remooued, the Kings termor may presently reenter (if he can) in peaceable maner.

If a forcible entrie, or dereiner shall bee made vpon any other mans lessee for yeares, tenant at wil, or vpon a coppiholder, whether it be by an estranger, or by the lessor, or by the Lord, the Iust. of peace are to remooue such force; and may commit to the prison, the parties which made such entry, or which shal hold it with force, & may fine them &c. But whither the Iust. of P. may make restitution and set them (*sc.* the lessee for yeares, tenant at will, or coppiholder) into their possessions againe, is much questioned.

Lambt. 159. Some hold opinion that the Iustice of peace may put them in possession againe, and of this opinion was Ma. *Marrow*, and Ma. *Lambert*: & to maintain this opinion, these reasons may be giuen;

First, for that the wordes of the statutes seemeth to warrant it: For the statute 15. *R.* 2. in the preamble thereof, as also the statute 8. *Hen.* 6. in the body thereof, hath this word (possessions) which word most properly doth extend to a lease for yeres, &c.

Againe, that clause of the statute 8. *H.* 6. which prouideth the restitution is thus; If it bee found that any doeth contrary to this statute, then the said Iustice &c. shall put the partie so put out, in full possession, &c.

Now it cannot be denied, but that he which by force expulseth lessee for yeares, tenant at will, or a copiholder, doth contrary to this statute; also they be the parties put out.

Againe the same mischiefe and inconuenience (which these lawes doe labour to remoue, is to lessee for yeares, tenant at will, and to the copiholder.

Co. 11. 33, 34. Plow. 178. And we may finde it vsuall, that where Stat. are made for to remedy any common mischiefe, there (to helpe things in the same degree) one action, thing, place, and person, hath in construction been taken for another: And a good expounder (saith Sir *Ed. Co.* 11. 34.) maketh euery sentence to haue his operation to suppresse all the mischiefes before the said acte, and principally those that are specified in the act.

Co. 3. 7. & 11. 73. And againe, saith hee, it is the office of the Iudges alwayes to make such construction of statutes as may represse the mischiefe and aduance the remedy, & to suppresse all euasions which may continue the mischiefe, and to adde force and life to the cure, and remedy, according to the true intent of the makers of the statute. *Co.* 11. 73. *b.* & *Co.* 3. 7.

Others hold the contrary, *sc.* that Lessee for yeares, nor a Coppiholder, or Tenant at will, cannot haue restitution by the hands

of the Iuſtice of peace, and this ſeemeth to be the common opinion; their reaſon is:

For that the words in the ſtatute of 8. *H.6.* (in that clauſe which ſpecially prouideth the Reſtitution) are thus; The ſaid Iuſtices, &c. ſhall reſeiſe the ſaid lands or tenements, and thereof ſhal put the partie ſo put out, in full poſſeſſion &c. which words, (lands or tenements) are onely to be vnderſtood of them that haue inheritance, or a freehold at the leaſt: But to this it may bee anſwered, that the ſaid ſtat. of 8. *H.6.* in the body thereof hath theſe words; Where any doe make any Forc'ble Entree into lands, tenements or other poſſeſſions, or them hold forcibly, &c. which wordes poſſeſſions, extendeth to a Leaſe for yeares, &c. And then the words (poſſeſſions) being in the ſame Statute, we ſhall finde that a Statute is to be expounded vpon all the parts thereof together, and not vpon one part alone by it ſelfe: to which purpoſe, ſee *Lincolne Colledge Caſe*, and Doctor *Bonhams Caſe*, in Sir *Edward Cokes Reports*. Raſt. 174. Co. 3. 59 b & 8. 117.

But it ſeemeth to thoſe which holde this laſt opinion, that if a Leſſee for yeares, Tenant at will, or a Copiholder, be forcibly put out, or held out by an eſtranger, if they will haue reſtitution, their inditement muſt be made & preferred in the leſſor, or lords name and the Iurie muſt find that the Leſſor, or Lord of ſuch Copihold, is diſſeiſed, and the Leſſee or Copiholder, is put out with force; And heereupon the Leſſor, or Lord, ſhall haue Reſtitution; And ſo by their Reſtitution, their Leſſee or Coppiholder is reſtored alſo; But ſuch Leſſee, or Copiholder, cannot (ſay they) preferre an inditement in their owne name, vpon the ſtatute, 8. *H.6.* for that they haue no freehold. Cromp. 161.

And to that purpoſe I find ſome Preſidents of Inditements in this forme: *viz. In vnum meſſuag. apud &c. adtunc exiſtent. liberum tenement. M. D. armig. vi & armis &c. Manuforti, & illicite ſuper poſſeſſionem cuiuſdam I. L. tunc firmarij præd. M. D. meſſuag. præd. intrauerunt, et ipſum I. L. vi & armis, ac manuforti & illicite tunc inde expulerũt & eiecerunt & præf. M. D. inde iniuſte diſſeiſiuerunt. &c.* See *poſtea tit. Preſidents.* Cromp. 249. a.

Alſo by this opinion, if a Leſſee for yeares, tenant at will, or a coppiholder, bee forcibly put out by their Leſſor or Lord, ſuch leſſee or coppiholder hath no remedy at all by inditement vpon this ſtatute, for they haue no freehold, and therefore can haue no reſtitution vpon this ſtatute.

Alſo by this opinion, if the Leſſee for yeares be put out by his Leſſor, And after the Leſſee putteth out the Leſſor againe forcibly, The Leſſee ſhall not bee indited, Neither ſhall the Leſſor haue Reſtitution vpon this Statute; For that the Leſſor is Cromp. 71.

not

not ousted nor disseised of his freehold: for the possession of the lessee is such a seisin of the lessor, of his freehold, that hee may haue an assise, if his lessee be put out.

And so of a Copiholder, not hauing forfeited his estate, if his Lord notwithstanding shal enter vpon him, and put him out, and the copiholder shall reenter vpon his Lord with force, the copiholder shall not be indicted, nor yet the Lord restored, *Cause ut supra.*

And so by this last opinion, the very mischiefe specified, and intended to bee helped by these statutes, should seeme still to remaine in all cases betweene such lessees, and copiholders, and their lessors, or lords, So as there can be no inquirie, nor restitution, in cases of forcible Entrie or *Deteiner* betweene them.

But howsoeuer the law be taken for the indictment, or restitution thereupon: yet in case that lessee for yeres, tenant at will, or a copiholder, be forcibly put out, or held out, either by a stranger, lessor, or lord, the Iustices of peace, or any one of them, by the statute 15. *R.* 2. *ca.* 2. may safely remoue the force vpon view thereof, and may commit the offendours to prison: And then the lessee for yeares, or copiholder, may presently reenter, if peaceably they can so do, and so may haue his possession againe, without any restitution made him by the Iustices.

Cromp. 71.

Now to shew some thing more, what the law accompteth to be force, and what weapons be offensiue in these, and the like cases. *Weapons.*

Master *Bracton* saieth, *Omnes illos dicimus armatos, qui habent cum quo nocere possunt.*

And therefore to haue harneis, guns, bowes, and arrowes, crosbowes, halberts, iauelins, bills, clubs, pikes, pichforkes, or swords, not vsually borne, by the parties, shalbe said to be *vis armata.*

Againe *si quis venerit cum armis, & dederit, vis tamen armata dicitur, sufficit enim terror armorum.*

Si quis venerit sine armis, et in ipsa concertatione, ligna sumpserit, fustes, aut lapides, vis dicetur armata.

And so to vse casting of stones, hot coales, scalding water, or lead, or any other thing wherewith one may hurt the person of another shalbe said to be *vis armata.*

Next where a force, or forcible defence, is iustifiable, and where not. *Lawful force*

Force being opposed against the law, is vtterly forbidden, but being vsed in the maintenance of the law, and with the warrant of law, it is allowed for that it maintaineth the peace of the realme: And therefore force may lawfully be vsed by all the kings officers, ministers, and subiects thereunto deputed, for the execution,

PR. 41.

or

or aduancement of iuſtice, or of the iudgements of the law.

And ſo firſt it is a lawfull force, whereby all offendors in treaſon, felonie, and other great crimes, be purſued, apprehended, caried to priſon, and receiue their condigne punishments.

It is a lawfull force, whereby the ſherife and his officers, do apprehend any perſon by vertue of the K. writ.

It is a lawfull force, whereby Iuſtices of P. do remoue vnlawful entries, or holdings of poſſeſſions, and repreſſe riotters, and do arreſt and ſend to priſon ſuch offendors.

And in theſe, and the like caſes, the K. officers (*ſcil.* the Sherife, Iuſtice of peace, and Conſtable) may take the helpe of others (what number they ſhall thinke meete) to aſſiſt them, when need ſhall require. See hereof *poſtea in tit. Poſſe comitatus.* 3. H. 7. Br. Riots 3.

Alſo it is a lawfull force, which Iuſtices of peace, Sherifes, Coroners, and Conſtables, ſhall vſe in apprehending, or committing to priſon ſuch as within their ſeuerall iuriſdictions, and in their preſence, ſhall in any ſort breake, or attempt to diſturbe or breake the peace; and they may therein take the aſſiſtance of others as aforeſaid.

Alſo in theſe caſes following, it is lawfull for the kings officers, by force to breake open a mans houſe, to arreſt offendors being therein, if the doores be all ſhut, ſo as the officer cannot otherwiſe enter the houſe. *viz.* PR. 42.

1 For the apprehending of any perſon for treaſon, felony, or ſuſpition of felonie. Co. 5. 92.

2 Where one hath dangerouſly wounded another, and then flyeth into an houſe, the conſtable, or other officer, vpon freſh ſuit may breake open the doore, and apprehend the offendor.

So may any other perſon beſides the officer, as it ſeemeth. 7. *Ed.* 3. 19. *Cromp.* 171.

3 Where there ſhall bee an affray made in a houſe, and the doores ſhut, the Conſtable &c. may breake into the houſe to ſee the peace kept.

4 So vpon a forcible entrie, or deteiner found by inquiſition, before Iuſtices of peace, or viewed by the Iuſtices themſelues, See here 42. 44.

5 Vpon a *Capias vtlagatum*, in any perſonall action, as alſo vpon a *Capias pro fine*, directed to the ſherife, the ſherife may breake open the doores &c.

6 Vpon a warrant or proces, for the appehending of any Popiſh Recuſant being excommunicate, the officer may breake open the houſe. *Stat.* 3. *Ia.* 4. *P. Rec.* 52.

7 Vpon a warrant for the peace, or good behauiour, the conſtables may breake open the houſe, by the opinions of *Popham* and

and *Clerke* Iudges of Aſſiſe at Cambridge Aſſiſes. 3. *Ia. Reg.*

8 Laſtly in all caſes where the king is a party, or hath intereſt in the buſineſſe, the officers may breake open the doores as aforeſaid: For no mans houſe ſhall bee a Caſtle againſt the king. *Co.* 5.91.

Co.5.91. And yet the ſherife nor his officers may not breake open any mans houſe, to execute the K. proces (vpon the bodie, or goods of any perſon) at the ſuit of any ſubiect. *Co.* 5.92.95.

But when a houſe is recouered by any reall action, or be *eiectione firmæ*, there the ſherife may breake the houſe, and deliuer ſeiſin or poſſeſſion to the demandant or plaint. &c. For after iudgement, it is no more (in right or iudgement of law) the houſe of the tenant or def. *Co.* 5.91.

Co.5.91. But note that the officer, before hee breake open the houſe or doores of any perſon, he muſt firſt ſignifie the cauſe of his comming, and deſire that the doores may be opened vnto him.

Co.5.91.& 11.82. 21.H.7.39. Note alſo, although no man may forcibly keepe his houſe againſt the kings officers in the caſes aforeſaid, yet euery mans houſe is (to himſelfe, his family, and his goods) as his caſtle, as well for his defence againſt iniurie and violence, as alſo for his repoſe and reſt: And therefore the law doth giue to dwelling houſes diuers priuiledges. *Forcible defence lawfull.*

1 Firſt that it is a mans caſtle for his defence as aforeſaid. See *infra*.

2 Alſo a mans houſe hath the priuiledge to protect him againſt any arreſt by force of any proces at the ſuit of any ſubiect as aforeſaid.

Co.11.82. 3 A mans houſe (in ſome caſes) hath a priuiledge againſt the K. prerogatiue; for it hath beene adiudged that Salt-peter men cannot digge in the manſion houſe of any ſubiect without his aſſent, in regard of the daunger that may happen thereby in the night time, to the owner, his family, and goods, by theeues, and other malefactors. *Co.* 11.82.

Co.5.91.& 11.82. 4 If theeues ſhall come to a mans houſe to robbe, or murder him, he may lawfully aſſemble companie to defend his houſe by force, and if he or any of his company ſhall kill any of them in defence of himſelfe, his familie, his goods, or houſe, this is no felony, neither ſhall they forfeit any thing therefore.

Cromp.70. 5 Alſo a man that is in poſſeſſion of a houſe peaceably, and doubteth that another (who in deed hath more right to the poſſeſſion, and who may enter) will enter vpon him: here hee which is in poſſeſſion may defend and keep his poſſeſſion of the houſe with his ordinarie companie, and may iuſtifie to beate the other which ſhall attempt to enter vpon him. But if he kill him, it is felonie;

lonie: Nay he in poſſeſſion (in this former caſe) may not hire any ſtrangers to aide him, neither may he haue his owne ordinary company in armour, nor otherwiſe be prouided with bowes or guns to ſhoot at the other as it ſeemeth. *Cromp. 70.a.* See *poſtea tit. Homicide.*

In defence of his perſon.

Alſo if a man being in his houſe, doe heare that another will come thither to beate him, hee may lawfully aſſemble his neighbours and friends &c. to aſſiſt and ayde him there in the defence of his perſon. 21.H.7.39. Br. Riots 1. Co.11.82.

And yet if he, or any of his companie, ſhall kill the other (or any of the other company) in ſuch defence of himſelfe, or his, this ſeemeth to bee felonie in all of them which be in the houſe, and in that action; ſo as they ſhall forfeit their goods thereby. See hereof *poſtea tit. Homicide.*

But if a man be threatned that if he come to ſuch a place, that then hee ſhall bee beaten, in this caſe, he may not aſſemble any companie to go thither to ſafegard his perſon; for there is no neceſſitie of his going thither: Beſides he may haue ſuretie of the peace againſt ſuch as threatned him. 21.H.7.39. Co.11.82.

In defence of others.

If there be an attempt made to beate a man, his wife, father, mother, or any of his children (within age) hee may lawfully vſe force to reſiſt it, and may iuſtifie the beating of the other in ſuch caſe.

Alſo the ſeruant may iuſtifie to beate another in defence of his maſter. *Br. Trn's 217.* 21.H.7.39.a

In defence of his goods.

Alſo a man may iuſtifie to beate another in the defence of the poſſeſſion of his goods: And if another hath taken away my goods, I may take them againe from him with force. Cromp.65.69.

Alſo if there bee an attempt made to diſſeiſe me of my land, or to diſturbe mee of my high way, or to turne an auncient water courſe from my mill, I may lawfully vſe force to reſiſt it. See *antea tit. Suretie for the peace.*

A keeper doth enter and chace vpon my land, pretending this to be within his purliew, where it is not, if I command my ſeruants to beate him of my ground, this ſeemeth iuſtifiable in the defence of my poſſeſſion, againſt ſuch vnlawfull claime. *Tamen quære.* Dyer 327. Cromp.68.

Where forcible detayner of poſſeſſion is lawfull.

THe ſtatute of 8.*H.6.* concludeth thus, Prouided that ſuch as keepe their poſſeſſion by force after that they, or their anceſtors &c. haue continued their poſſeſſion three yeres, ſhal not be indamaged by force of that ſtatute. 8.H.6.cap.9. 31.El.11. P.Force 4.

This

22.H.6. f. 18.b. This prouiſo muſt (as it ſeemeth) be thus conſtrued, *ſcil.* that where a man is ſeiſed (of a lawfull eſtate or poſſeſſion) of an houſe, or lands, and he or his aunceſtors, or they whoſe eſtate hee hath therein, haue continued the poſſeſſion of the ſame peaceably, by the ſpace of three whole yeares together, without interruption (and his eſtate not ended) there he may hold and keepe ſuch poſſeſſion with force, againſt all others: yea it ſeemeth if he ſhall hire ſtrangers to aide him, to keepe ſuch poſſeſſion, or ſhall haue his company in armour, hee is not puniſhable by theſe ſtatutes: But he may not reſiſt the Iuſtices of P. that ſhall come to view this.

And if he ſhall be indicted for ſuch his forcible holding (after three yeares ſuch quiet poſſeſſion) he may pleade ſuch his lawfull and peaceable poſſeſſion by the ſpace of three yeares next before ſuch indictment, And thereby he ſhall auoid both the impriſonment and fine, and alſo ſhal debarre the other partie of his reFR.37. ſtitution: Neither may the Iuſtices of P. remoue him from his poſſeſſion, though it bee found by the Inquiſition taken before them, that he held that houſe, or land by force, after 3. yeares lawfull and peaceable poſſeſſion, as aforeſaid.

But here it ſeemeth theſe foure diuerſities are to bee obſerued.

6.& 7.Ed.6. 22.H.6.8. Lambt.165. Firſt, where the party in poſſeſſion, did enter peaceably, and where forcibly: for if a man enter forcibly, and after continueth his poſſeſſion peaceably, by the ſpace of three yeares without interruption, yet (it ſeemeth) he ſhall not be aided by theſe ſtatutes.

Secondly, where the party in poſſeſſion, hath continued his 3. yeares poſſeſſion peaceably, and where by force.

For if after a lawfull and peaceable entrie, a man ſhall continue or hold his poſſeſſion by force, this is a forcible holding or detainer, and puniſhable by the ſtatute of 8. *H.6.* And three years of ſuch poſſeſſion ſhall not aide him as it ſeemeth.

22.H.6.18.b. Fitz.Entre 20. Br.forc.6. vide 23.H.8. pag.ſeq. Thirdly, where the party in poſſeſſion, is in by right, and of a lawfull eſtate, and where by wronge: And therefore if a diſſeiſor (or other perſon that commeth in by a wrongfull and vnlawfull title) hath continued ſuch his poſſeſſion peaceably by the ſpace of 3. yeares, without interruption, *quare* if he ſhalbe aided by either of theſe ſtatutes of 8. *H.6.* or 31. *El.*

14.H.7.28. Br.forc.10. But if a diſſeiſor hath continued his poſſeſſion forcibly by the ſpace of 20. yeares together, yet he may be indicted, vpon the ſtatute of 8. *H.6.* before a Iuſtice of peace, of the forcible detayning of the ſame, And the ſame being found, the ſaid Iuſt. of P. is to reſeiſe the ſame, and to award reſtitution to the party diſſeiſed, or ſo put out.

Fourthly

Fourthly, where the party hath continued ſuch his poſſeſſion three yeares without interruption, and where his poſſeſſion hath bin interrupted or diſcontinued.

For if a man hath been in peaceable poſſeſſion of land &c. by the ſpace of three yeares, and aboue, by a good title, and then is diſſeiſed and expelled by force, and the diſſeiſee reentreth peaceably: or the diſſeiſor is therefore indicted, vpon the ſtatute of 8. *H.6.* and the diſſeiſee is thereupon reſtored, and is in poſſeſſion accordingly: yet in theſe caſes the diſſeiſee cannot iuſtifie the deteiner of the poſſeſſion of thoſe lands by force, becauſe his poſſeſſion was once interrupted: But after, (ſuch interruption, and reentrie, or reſtitution) if he ſhall continue a peaceable poſſeſsion againe for three yeares together, then it ſeemeth he may iuſtifie the deteyner of the poſſeſſion thereof by force, by vertue of the prouiſo in the ſtatute of 8. *H.6.* Dyer 142. Br. forc' 22. & 29.

If a diſſeiſor hath continued his poſſeſſion peaceably three yeares, and after the diſſeiſee doth reenter, or doth make his claim ſo neere as he dareth, and then the diſſeiſor reenters againe, or continueth his poſſeſſion, after ſuch claim, here the diſſeiſor cannot iuſtifie to hold the ſame with force, for by the reentrie or claime of the diſſeiſee, the firſt diſſeiſin and poſſeſſion of the diſſeiſour was determined, and the diſſeiſour is in of a new diſſeiſin. 33. H. 3. Br. forc' 22. Litt. 419.

Alſo if he that hath beene a lawfull poſſeſſor of lands by the ſpace of twentie yeares together, be once cleerely and wholly remoued from the poſſeſſion of the ſame land, he cannot come with force, or multitude, to put himſelfe in poſſeſſion thereof againe, and to detaine the ſame with force, becauſe his poſſeſſion was once interrupted: And if he be indicted (vpon the ſtatute of 8. *H.6.*) for ſuch forcible entrie, he ſhall not be relieued (touching the reſtitution) by the ſtatute 31. *El.* for that he had not the occupation of the ſaid lands, nor had beene in quiet poſſeſſion therof by the ſpace of three yeres together, next before the day of ſuch indictment found. Dyer 141.

Now, how many ſeuerall remedies the partie hath, which forcibly is either put out, or kept out of the poſſeſsion of his houſes or lands &c. contrarie to theſe ſtatutes.

Action vpon the ſtat. of 8. H.6.

Firſt, the party ſo grieued (hauing an eſtate for life, in taile, or fee) may haue his aſſiſe, or action of treſpas of forcible entrie vpon the ſtatute of 8. *H.6.* againſt ſuch diſſeiſor: and therein if the defendant be attainted of force, he ſhall fine to the king, and alſo anſwere to the plaintife his treble dammages, and treble coſts of ſuit, and alſo the pl. ſhall thereupon haue a writ of reſtitution to reſtore him to his former eſtate. 1. R. 2. ca. 9. 8. H. 5. ca. 9. P. 3. Fitz. N. B. 348. c. e. & 249. a. Co. 10. 115. PR. 39.

But

9.H.6.19. F.N.B.248.h. But (this action being the ſuit of the party, and onely for the right) this remedy (by action) is only where the entrie of the def. was not lawfull: for if a man entreth with force, where his entrie is lawfull, as if the diſſeiſee ſhall enter vpon the diſſeiſor with force, he ſhall not be puniſhed by action: But yet he may be indicted vpon the ſtatute, and vpon ſuch indictment found, the party put out ſhalbe reſtored: for the indictment is for the force, and for the K. And herein the offendor ſhal make fine to the King, although his right be neuer ſo good.

Lambe.173. 2 Alſo the party ſo grieued, if he will looſe the benefit of his treble dammages and coſtes, he may be aided, and haue the aſſiſtance of the Iuſtices of peace, and that after diuerſe ſorts: Firſt hee may purchaſe a writ out of the Chauncerie (directed to the ſherife only, or to the ſherife and Iuſtices of peace, and to euerie of them) for to remoue the force, and this is vpon the Statute of Northampton 2.*Ed.*3.*ca.*3. the forme of which writ you may ſee *Fitz.N.Br.*249.*f.* 2 *Writ vpon the Stat. of Northampton.*

But vpon this writ the Iu. of peace is to proceede only as a miniſter, and is to certifie his doings herein: and that Iu. of peace to whom the writ ſhall be deliuered, ought for to execute it, *ſc.* he may remoue the force: but here he may not put the party in poſſeſſion againe, who was put out.

Lambt.176. Cromp.74.162

For the manner of the Iu. proceedings herein. See in the other title of *Forcible Entrie.*

Dyer.187. Cromp.165. 3 Alſo the party grieued, may, at the generall ſeſſions of the peace within the ſame county, prefer his bill of indictment, vpon the ſtatute of 8.*H.6.* for ſuch forcible entrie, or detеyner: which being found there, the complainant ſhalbe reſtored to his poſſeſſ. by a writ of reſtitution, granted out of the ſaid court to the ſherif. 3 *Indictmēt in Seſſions.*

4 Alſo the party ſo grieued, for a more ſpeedy remedy, may complaine to any one or more Iu. of peace, of the ſame county, of the ſaid force: and thereupon the ſaid Iuſtice of peace may, *ex officio*, and without any writ, either do execution of the ſtatute of Northampton as aforeſaid: Or elſe the ſaid Iuſtice of peace vpon ſuch complaint muſt goe to the place where ſuch force is, to ſee it, and to remoue the force, and to arreſt and commit the offendors, and ſhal alſo keepe a ſpecial ſeſſions to inquire of the ſaid force: & if vpon ſuch inquiry ſuch force ſhalbe found, then the ſaid Iu. ſhal reſtore the party grieued to his poſſeſſ. again; and here no other Iu. of P. can grant a *Superſedeas* to ſtay the ſame reſtitution. 4 *By the Iu. out of ſeſſions*

See more hereof before in the other title of *Forcible Entrie.*

Alſo the party grieued may remoue ſuch indictment, found either at ſuch generall or ſpeciall ſeſſions, by a *Certiorari* in the

Kings Bench, and the Iudges of that court may award a writ of restitution, to the sherife of the county, to restore possession to the party. See here 44.

Enquirie. Now when the Iustice of peace shall make such enquiry, hee shall direct his precept or warrant, to the sherife, commaunding him to cause to come before the said Iustice of peace, at some good towne there neere, foure and twentie sufficient and indifferent persons dwelling neere to the said lands or tenements (whereof euery one shall haue in lands or tenements 40.s. by the yere at the least) to enquire vpon their othes of such force &c. See before in the other title of *Forcible Entrie*.

Vpon default of apparance of those Iurors, the Iu. of peace may award an *Alias*, and after that *Plures infinite*, till they come; but so that at the day of the second precept, or writ, the sherife must returne 40.s. in issues, vpon euery one of them, and at the third writ 5.li. and at euery day after the double. 8.H.6.ca.9. Lambt.168.

And although any of such Iurors shall not haue 40.s. land *per annum*, yet their presentment of such force, is good for the king, so as the offendors shall fine therefore to the king: But whether the party shall haue restitution vpon such a presentment, it being pleaded or shewed at the time of the restitution to bee made, seemeth a doubt. See here *pag.* 188. Lamb.155.

If the sherife shall returne smaller issues vpon the Enquirors then the statute doth appoint, yet the party indicted shall not impeach the enquiry therefore. Lamb.156.

Neither is it cause to impeach the enquiry, though the Iustice of peace doe not goe to see the place where the force is. *Marrow.*

And it is conuenient, vpon such enquiry, that the euidence be giuen openly to the Iury, to the intent it may appeare to the Iu. of peace, or court, whether there shall be reasonable cause to stay restitution, or no, after the indictment found.

Of Restitution to be made to the party put out.

Restitution. I Wil here shortly recite the words of the stat. which for this busines of restitution will giue the better light.

And if vpon such enquiry, it be found, before the said Iu. that any haue done contrary to this sta. (*viz.* haue entred, or held with force) the said Iu. of P. &c. shal reseise the said lands or tenements so entred vpon, or holden, & put the party so put out, in ful poss. of the same lands and tenements so entred or holden, as before. 8.H.6.ca.9.

Here wee see that after such forcible entrie, or holding, so found by enquiry, the said Iustice of peace &c. shall reseise the

the ſaid lands or tenements, and ſhal remoue the force (*ſc.* all ſuch
PR. 35. offendors as ſhalbe found in the houſe, or vpon the lands, entred or held with force) and vpon the prayer of of the party ſo put out, the ſaid Iu. of P. ſhal reſtore him to his poſſeſſion againe.

And herein the Iuſtice of peace needeth not to ſtay, or ſtand vpon the right or title of either of the parties. See hereof a little after *ſub hoc tit.*

But no reſtitution ſhalbe made, but where the forcible entrie, or deteiner, is firſt found by inquiſition.

Cromp. 166. Concerning this Inquiſition or Indictment, the Iuſtices of P. *Indictment: the forme.* ſhall do well to peruſe and regard the ſame, to ſee if it be ſufficient, for the Iu. of peace ought not to award reſtitution, where the indictment ſhall appeare to them to be any way inſufficient in the law, either in matter or forme.

Lamb. 156. 157 Firſt therefore to haue reſtitution, the putting out (by expreſſe words) muſt be in the indictment, and found by the inquiſition: for another man may enter vpon me, and yet not put me out, And then there needeth no reſtitution to be made by the Iuſtices.

And this putting out, is to be vnderſtood onely of houſe or land, and not of a rent, common, aduowſon, and ſuch like, into which an actual entrie cannot be made: and therefore none ſhal haue reſtitution, but ſuch only as are put out of houſe or land. See *antea ſub hoc tit.*

Lamb. 481. Alſo the indictment ought to expreſſe the qualitie of the thing entred vpon &c. *ſcil.* whether it be a meſſuage, cottage, meadow, paſture, wood, or land errable: for if the indictment be, *quod manu forti intrauerit in tenement' &c.* it is void for the incertainty, becauſe the word *tenementum* may extend to either of them.

4. H. 4. 16. Br. fol. 13. Alſo the indictment muſt haue theſe words, *ſcil. adhuc extra tenent*, otherwiſe the partie ſhall haue no reſtitution, and yet theſe words be not in the ſtatute: But without theſe words in the indictment, it may be ſuppoſed and thought that hee which put me out, hath left the poſſeſſion againe, or that I haue gotten it againe; and then the reſtitution is needleſſe.

So as in euery ſuch indictment, theſe words are materiall, *ſc. expulerunt, & adhuc extra tenent:* And for lacke of either of theſe words, no reſtitution ſhalbe made or awarded.

Lambt. 145. Alſo one of theſe two words *Manuforti*, or *cum Multitudine*, ſeeme to be materiall in the indictment, vnleſſe they be implyed by recyting the ſtatute of 8. *H. 6.* and concluding *contra form' ſtat. prædict.* or by ſome other words, in the indictment. See the preſidents herein. For the forme to be vſed in theſe indictments, See more *poſtea tit. Indictments.*

Cromp. 162. If a man ſhalbe reſtored vpon an inſufficient indictment taken

before the Iu.of P.and this be remoued into the Kings Bench,the court there will cauſe the party to be reſtored,that before was put out by the Iu.of P. Cromp.162.

Alſo,if error, or inſufficiencie be in the indictment, taken before Iu.of P.and yet reſtitution is awarded by them, any two of thoſe Iu.of P.which were preſent at the taking of the ſaid indictment,vpon the prayer of the party may (at another ſeſſions, or out of the ſeſſ.)grant and award a *Superſedeas* to the ſherif to ſtay the ſame reſtitution,if the ſherif hath not made reſtitution before the *Superſedeas* come to his hands. Cromp.165 & 166.b.

But no other Iu.of P.(beſides thoſe which were preſent at the taking and finding of the ſaid indictment)can grant a *Superſedeas*, if the indictment were found at a ſpeciall ſeſſions, *quære* if it were found at the quarter ſeſſions, *Ibid.* Dyer 187.

A man is indicted that hee entred with force, and held with force,and vpon the trauerſe,it is found that he entred with force, but not that he held with force, yet this indictment ſeemeth good enough, and the party ſhalbe reſtored. Cromp. 165.

So,two are indicted of a forcible entry and deteyner,and vpon the trauerſe, it is found that the one entred with force,and the other held or deteined with force,yet the party ſhal be reſtored. Ibid.

Seuerall Indictments.

If it be found by one Enqueſt that *A.*put me out by force, and by another Enqueſt, that I did put out *A.* by force, either of vs may pray to haue reſtitution againſt the other: but he that is firſt reſtored is in the worſe caſe,for the other may haue reſtitution afterwards,and then he that had reſtitution firſt,is without remedy, by the hands of the Iu.of P.ſauing that he may reenter,if he can, peaceably,or haue his action. Cromp.166. Br.forc.6.

If it be found by one Enqueſt,that *A.*did put me out by force, and by another Enqueſt taken at the ſame ſeſſions, that *B.* did put me out by force,I may chuſe vpon whether of theſe indictments I will be reſtored: and if I haue reſtitution againſt *A.* and this be returned,I cannot haue reſtitution vpon the other: But if (vpon the writ of reſtitution) it bee not returned that I haue reſtitution, then I may afterwards haue reſtitution againſt *B.* vpon the other verdict,if *B.*hath reentred vpon the firſt reſtitution made to me. *Marrow.* Cromp.166.

*A.*is diſſeiſed,or put out with force by *B.*and after *B.*is put out with force by *C.*and all this is found by one and the ſame inquiſition, here *B.* may haue reſtitution againſt *C.* for *B.* hath more right to the poſſeſſion then *C.* and then may *A.*haue reſtitution againſt *B.* But vpon this inquiſition, if *A.* haue reſtitution firſt, then *B.*ſhall not haue any reſtitution: otherwiſe if theſe had been found by ſeuerall inquiſitions. Lambt. 158.

Who

Who ſhall award and make this reſtitution.

AFter the force is found by the inqueſt, the Iuſtice of peace (before whom the ſaid force ſhalbe ſo found) may himſelfe put the party in poſſeſſion againe: Or he may make his precept (vnder his owne *teſte* alone) to the ſherife to do it.

The forme of the Precept to the ſherife to make reſtitution. See *poſtea tit. Preſidents.*

Dyer 187. But no other Iuſtice of peace hath any authority (by the ſtatute) to graunt or award reſtitution, but only he or they, before whom the force was found by inquiſition. Nay the Iuſtices of *Oyer* and *Terminer*, nor the Iuſtices of Gaole deliuerie cannot

3. El. Daliſon. Co. 11. 59. 65. grant reſtitution, nor the Iuſtices of P. at their general Seſſions of the peace, cannot grant this reſtitution, except the indictment were found before them.

And yet the Iuſtices of the Kings Bench (in regard of their ſupreame authority in all caſes of the crowne) either vpon certificate (to them made by the Iuſtice of peace before whom ſuch force was found) of the preſentment of ſuch force: or if the ſaid preſentment, or indictment, ſhalbe remoued before them by *Certiorari*, in both theſe caſes, the Iuſtices of the Kings Bench may award reſtitution. See *antea in the other tit. of Forcible Entrie.*

Co. 11. 65.

But neither the Iu. of the K. Bench, nor any other (beſides him

Lambt. 161. or them that made the inquiry) can perſonally reſtore the party, but only by way of precept to the ſherife.

The ſherife (if need be) may take the power of the county, to execute the precept of the Iuſtice of P. herein.

Lamb. 160. And if the ſherife vpon ſuch a precept, or vpon a writ of reſtitution (from the Seſſions &c.) ſhall returne that he cannot make reſtitution, for reſiſtance &c. he ſhal be amerced for making ſuch a returne, becauſe in ſuch caſe he might haue taken the power of the county to aſſiſt him therein. See the like caſe *Fitz. Execution* 147.

To whom reſtitution ſhall be made.

THis reſtitution ought to be made, to him that was put out, and to none other, for ſo are the words of the ſtatute.

PR. 38. Therefore if the father be put out by force, and dyeth, his heire ſhall not haue reſtitution: yet here the Iuſtices may impriſon, and fine the offendors; for by ſuch forcible entrie they haue broken the peace. See *antea in the other tit. Forcible Entrie.*

Lambt. 156. Alſo, if after the death of the father, a ſtranger abateth, or

entreth into his land by force, before the heire hath gotten actuall poſſeſſion indeed, the heire ſhall not haue reſtitution, becauſe hee had but a poſſeſſion in law deſcended vpon him.

The diſseiſee doth put the diſſeiſor out with force, the diſſeiſor ſhalbe reſtored; for the right or title is not commonly diſputable or materiall: but by the words of the ſtatute, he that is in ſuch ſort (*ſcil.* forcibly) put out, ſhalbe reſtored. Fitz.249.h.

Yet it ſeemeth in this caſe, that vpon trauerſe tendered by the diſſeiſee, and his right appearing, the Iu. of P. may ſtay reſtitution. See hereof *poſtea ſub hoc tit.* Dyer.122.

Alſo if the diſſeiſor be reſtored againe, yet the diſſeiſee may after reenter peaceably, or haue his aſſiſe. Br.force.6

But if the diſſeiſee ſhall enter peaceably vpon the diſſeiſor, and ſo they both ſhall abide and continue there together, for diuers daies, and after the diſſeiſee doth put out the diſſeiſor with force, and is thereof indicted: here it ſeemeth the diſſeiſor ſhall not be reſtored; for the diſſeiſors poſſeſſion was auoided in quiet maner at the firſt entrie of the diſſeiſee, and ſo the diſſeiſor had no poſſeſſion, in the eye of law, when he was put out. Crom.163.

If the diſſeiſee ſhall enter peaceably, the diſſeiſor and his familie being abroad, and after the diſſeiſee ſhall keepe his poſſeſſion with force, the diſſeiſor ſhall not bee reſtored, by reaſon of the eigne title of the diſſeiſee, and for that hee entred peaceably. See *antea* in the other title, *Forcible Entrie, the contrarie, vt ſeme.* Cromp.162. & 164.

But here the diſſeiſee ſhal be impriſoned and fined, for keeping his poſſeſſion with force: For forcible keeping or detaining, is as well prohibited, as forcible entrie.

And here note, that the being of a mans wife, children, or ſeruants, in the houſe, or vpon the land, do preſerue his poſſeſsion; but his cattell being vpon the ground &c. doe not preſerue his poſſeſsion. Cromp.164. Aſſiſe 418.

Alſo when two are in poſſeſsion of an houſe &c. and the one claimeth by one title, and the other by another title, here the law ſhall adiudge him to be in poſſeſsion, who hath the beſt right to the poſſeſsion: So that if A. ſhall wrongfully enter vpon B. and they both ſhall continue in the houſe, and after B. ſhall put out A. with force, A. ſhall not be reſtored; for A. neuer gained any poſſeſsion by his entrie. Litt 140. Park.45.

Two Iointenants, or Tenants in Common, and one of them doth forcibly put out the other of his poſſeſsion, hee that is ſo expelled, may haue an action of treſpaſſe of forcible entrie againſt his companion, vpon the ſtatute of 8. *H.6.* and thereupon hee ſhall haue a writ of Reſtitution to reſtore him to his former eſtate: But what the Iuſtice of peace can do herein, *quære*, for that Fitz.249.d. PR.39.

that his entrie and poſſeſsion is lawfull through the whole land, in reſpect of his owne moitie and eſtate.

Lamb. 158. Two Ioyntenants bee put out with force, and one of them onely ſueth to haue Reſtitution: Reſtitution ſhall bee made vnto him.

Whether a copiholder, leſſee for yeares, or tenant at will, ſhall haue reſtitution; ſee before.

P.R. 38. If Leſſee for yeares bee put out of his terme by force, and die, though after his death, this force bee found by Inquiſition, taken by a Iuſtice of peace, yet his Executors ſhall not bee reſtored to that land (by the Iuſtice) for that they are not the ſame perſon which was put out.

What cauſes there may bee for ſtaying the Iuſtices of Peace from graunting Reſtitution.

Lamb. 151. Cromp. 162. ALthough the partie thus to be indited for a force, ſhall not be heard nor ſuffred to giue his title in euidence, to excuſe himſelfe of his Forcible entrie, or Deteiner, to ſaue his fine due to the King for ſuch force (which fine hee ſhall make though his right be neuer ſo good;) yet to the reſtitution (which the Complainant ſhall demand if the force be found) the Defendant ſhall be heard

Dyer. 122. to diſprooue the title of the Complainant, or what he can ſay otherwiſe for the ſtay of reſtitution. *Quære*, and ſee before in the other title of *Forcible Entrie: vide la contrarie.*

Now the defendant (or party indited) for the ſtay of reſtitution may, at the time of the reſtitution to bee made, pleade or alledge any of theſe things following:

1 His quiet poſſeſsion by three yeares together.

2 He may deliuer to the Iuſt. of peace, or Court, a *Certiorari*, and this is a *Superſedeas* to them.

Lamb. 156. 3 He may tender his Trauerſe: But Maſt. *Lambert* ſeemeth to doubt whether the partie may be admitted to his Trauerſe before the ſame Iuſtice of peace.

4 Hee may pleade the inſufficiency of the Inditement. See *paulo antea ſub hoc tit.*

5 Hee may pleade the inſufficiencie of any of the Iurours, *ſc.* for not hauing fortie ſhillings land *per annum*: And in this caſe Maſter *Marrow* is of opinion, that the partie ſhall haue no reſtitution: Yet Maſter *Lambert*, and Maſter *Crompton* ſeeme to bee of the contrary opinion. *Lambert.* 155. *Crompton.* 165. *Ideo quære.*

Lamb. 156. And it ſeemeth (by the opinion of Maſt. *Lambert*) that the Iuſt. of peace ought not to ſtay reſtitution, ſaue onely, either by alledging

ging three yeares quiet poſſeſſion, or by remouing the record and preſentment into the Kings Bench.

Three yeares poſſeſſion. For the firſt, there ſhalbe no reſtitution awarded, where the partie indited hath bin in quiet poſſeſſion by the ſpace of three whole yeares together, next before the day of ſuch inditement found; if his eſtate be not ended; And this the partie indited may alledge to ſtay the reſtitution, And the reſtitution vpon this ſhalbe ſtaied by the Iu. of peace, vntill it be tried, if the other partie will deny or trauerſe the ſame. See more hereof before *ſub hoc tit.*

Certiorari. Alſo if a man who hath made a forcible entry or deteiner be in doubt that he ſhalbe indited therof before the Iuſt. of peace (vpon the ſtat. of 8. *H.6.*) and that thereupon reſtitution will be awarded againſt him, he may haue a writ of *Certiorari* out of the K. Bench ready, and when the bill of inditement is found, he may preſently deliuer it to the Iuſt. of peace, or Court and this is a *Superſedeas* to them for to ſtay the reſtitution; for that vpon this writ the ſaid inditement ſhalbe remooued from them into the Kings Bench. Cromp. 164. P.K. 37.

And although the inditement bee found after the *Teſte* of the *Certiorari*, it is not material, for they be both the kings courts, &c.

But if a *Certiorari* commeth to remoue an inditement taken before the Iuſt. of peace in the countrey, and the partie wil not ſue to remoue it, but ſuffreth it to lie ſtill, the Iuſt. of peace may proceed to grant reſtitution, notwithſtanding the writ, as *Hobert* the Kings Atturney ſaid in 6. *H.7.* But *Keble* held opinion againſt him; and it ſeemeth the Iuſtices of peace ought *ex officio*, to ſend the inditement away, becauſe they are commanded ſo by the Writ; And this Writ is a *Superſedeas* of it ſelfe to the Iuſtices of peace to ſtay their proceedings. 6.H.7.16. Lamb. 498. Cromp. 166.

After reſtitution made by the Iuſt. of peace, if the other partie doth remoue the inditement by a *Certiorari* of a more eigne date then is the inditement, the Iuſt. of the Kings Bench may award reſtitution backe againe: for vpon the matter the Iuſt. of peace had no power to make reſtitution, for that the *Certiorari* hath relation from the date thereof. Cromp. 162.

After Reſtitution granted from the Seſſions, and deliuered to the Sheriffe, the other partie hauing a *Certiorari*, deliuereth it alſo to the Sheriffe after the Seſsions, the Sheriffe ſhall not ſurceaſe thereupon (for he hath no authoritie to allow thereof.) But if the *Certiorari* were deliuered to any Iuſtice of peace, hee may thereupon graunt a *Superſedeas* to the Sheriffe; And if reſtitution were made by the Sheriffe before the ſaide *Superſedeas* came to his hands, then the other partie ſhall haue reſtitution backe againe, in the Kings Bench vpon the inditement remooued thither. Ibid.

Trauerſe. The tender of a Trauerſe (to an Inditement of Forcible entry,

vpon

vpon the Statute of 8. *H.* 6.) is no *Superſedeas* but in diſcretion;
Dyer 122. So as the Iuſtices of peace, or Court, may graunt, or may ſtay the reſtitution at their diſcretion, according as the trueth of the right or title ſhall appeare to them; And ſo is the vſe of the Kings Bench.

Or elſe the Iuſtices of peace (before whome the inditement was found) may after Trauerſe tendred, certifie or deliuer the inditement into the Kings Bench, and ſo referre the further proceedings therein to them.

Cromp. 165. But if the partie endited ſhall tender a Trauerſe preſently, whereupon reſtitution is ſtaid, and after hee ſhall not purſue his Trauerſe with effect (but diſcontinueth it) and after doeth tender another Trauerſe vpon reſtitution prayed at another time, the Iuſtices of peace, or Court, ſhall doe well to proceed to grant reſtitution, notwithſtanding ſuch Trauerſe tendred.

Cromp. 166. And it is the courſe of the Kings Bench, that hee that tendreth the Trauerſe there (vpon ſuch an inditement) ſhall beare all the charges of the triall, and not the King, nor hee at whoſe ſuite the Inditement was found; And the ſame reaſon ſeemeth vpon an inditement trauerſed before Iuſtices of peace.

Riotts.

IT may easily and manifestly appeare to all such as haue been conuersant in our Chronicles, how pernitious and dangerous to this kingdome, vnlawful assemblies haue bin in all precedent ages, yea, such as at the first were very smal, and began vpon very small occasion, yet not being represſed in time grew to such greatnesse and height, that they afterwards put in hazard the state & gouernment of this land; And therfore it is behouefull and good wisdom for all Iust. of P. to indeauor by all good meanes to quench the beginnings and first sparkes of such assemblies, as knowing, that for want of timely restreint, they may grow to the like danger againe.

Now for the better suppressing of such vnlawfull assemblies, and partly for the better enabling of the Iust. of P. therein, there were three stat. deuised and prouided specially by the wisdome of the realme, and are remaining yet in force, that is to say, The stat. of 13.*H.*4.7. 2.*H.*5.8. and 19.*H.*7.13.

The Stat. of 13.*H.*4. authorizing, nay vpon a great penalty enioyning the Iustices of peace (together with the Sheriffe) to arrest, remooue, and punish the offenders. 13.H.4.ca.7.

But for that the aforesaid Statute gaue no remedy to the partie grieued, if the Iust. of peace or Sherife should make default, as also for the better stirring vp of the Iustices in this businesse, The Stat. of 2.*H.*5. was made, authorizing the L. Chancellor of England, (at the instance of the party grieued) to grant a commission to inquire of the defaults of the two next Iust. of peace, and Sheriffe, in not executing the aforesaid statute of 13.*H.* 4. And withall prouiding how the charges of the Iust. spent about the suppressing and inquiry of such Riots, should bee borne; and also limitting what punishment as wel the offendors atteinted of such Riots, as also all such as should not be ready to assist and aid the said Iustices to represse such Riotters, should suffer. 2.H.5.8.

And lastly, for that the two former Statutes did not expresse of what sufficiency the Iurors impanelled to inquire of riots, should be; nor what issues they should lose if they appeared not; nor any certain punishmēt was inflicted vpon the maintainors or imbracers of such Iurors: Therfore the said stat. of 19.*H.*7. was made: But so much of these things as concerne the Iust. of peace, do appeare more particularly heere before. And therefore now I will proceed in this businesse. 19.H.7.13.

First,

First, what shalbe said to be a Riot, Rout, or vnlawfull assembly, within the meaning of these Statutes.

Fr.5. Cromp.68. P.R.25. WHen three persons, or more, shal come or assemble themselues together, to the intent to do any vnlawfull act, with force or violence, against the person of another his possessions, or goods, as to kill, beat, or otherwise to hurt, or to imprison a man, to pull downe a house, wall, pale, hedge, or ditch, wrongfully; to enter vpon another mans possession; or to cut or take away corn, grasse, wood, or other goods wrongfully; or to hunt vnlawfully in any parke or warren, or to doe any other vnlawfull acte (with force or violence) against the peace, or to the manifest terrour of the people: If they onely meete to such a purpose or intent (al- *Vnlawfull assembly.*
Br. Riot. 4.5. Lamb. 179. 181 though they shall after depart of their owne accord, without doing any thing) yet this is an vnlawfull assembly.

Br.4. If after their first meeting, they shall ride, go, or moue forward, *Rout.* toward the execution of any such act (whether they put their intended purpose in execution, or not) this is a Rout.

Br.4,5. And if they doe execute any such thing in deede, then it is a *Riot.* Riot.

And yet by the opinion of some, a Rout is onely, where such a company (of three or more) are so assembled, for their owne common quarrell: As where the Inhabitants of a Towne doe assemble together to pull downe a house, wall, pale, ditch, or other inclosure, pretending to haue title of Common, or a way there; or to beate a man that hath done them some publique offence; But yet the word Rout, seemeth to haue a more large and ample meaning, as appeareth by the Statute, 18. *Edw.* Br.4.5. Lamb.180. 3. *Stat.* 1. speaking of Routs that are brought in the presence of the Iustices: and the Statute of 2. *Rich.*2. *cap.*6. treating of riding in great routs.

Now in Riots, Routs, and vnlawful assemblies, these foure circumstances are to be considered:

First, the number of the persons assembled.

Secondly, the intent and purpose of their meeting.

Thirdly, the lawfulnesse or vnlawfulnesse of the act.

Fourthly, the manner and circumstance of doing it.

For the number, there must necessarily be three persons at the *The number.* least, so gathered together, or else it can be no Riot, Rout, or vnlawfull assembly within the meaning of these statutes.

P.16.17. By the stat. of 1. *M.*12. & 1. *Eliz.*16. if twelue persons, or more, assembled together, should haue intended or gone about to haue done any act contrary to those stat. if they had not departed within

in one houre after proclamation, it had bin felony in them all.

And by the ſame ſtatutes, if the number had bene 40. or aboue that had aſſembled together, to the intent to haue done any acte contrary to thoſe ſtatutes, or any other felonious or rebellious act, if they had continued together three houres after proclamation, it had bene felony; but theſe two laſt ſtatutes ſtand now diſcontinued. P. 31.

But an aſſembly of an hundred perſons or moe (yet though they be in armour) yet if it bee not *in terrorem populi*, and were aſſembled without any intent to breake the peace, it is not prohibited by any of theſe ſtatutes, nor vnlawfull: ſee *infra*.

The Intent. For the intent: It ſeemeth it can be no Riot, &c. except there be an intent precedent, to doe ſome vnlawful act, and with violence or force. Cromp. 62. P.R. 25.

And therefore if diuers bee aſſembled, and none of them doe know to what end or purpoſe they are met, This can make no riot or rout, till the intent be knowen. Lamb. 183. Cromp. 61.

If the maſter (intending to make a riot) taketh with him his ordinary ſeruants, & maketh an affray, or other outrage with them, this is no riot in the ſeruāts, except their Mr. had made them priuy to his intent before; but the Ma. only ſhalbe puniſhed for the riot. Lamb. 183.

And in this former caſe, it is not materiall, though the number of his ſeruants which goe with him bee aboue his degree, ſo long as they be his houſhold ſeruants. *Lamb.* 184. *P.R.* 25.

If diuers being lawfully aſſembled, ſhal quarrell, or fall out vpon the ſudden, without any former ſuch intent; this is no riot, but a ſudden affray. Cromp. 62.

If diuers be at an Alehouſe, and without any intention of an affray, they ſuddenly fall together by the eares, this is no riot, but a ſudden affray, becauſe they had no ſuch intention before. Lamb. 184.

If a Iury being together, ſhall fall out and fight, this is no Riot, becauſe they were lawfully aſſembled. Ibid.

Alſo where there be three or more gathered together, either to execute the iuſtice of the law, or for the exerciſe of valour, & triall of actiuity, or for the increaſe of amity & neighbourly friendſhip (and not being met with an intent to breake or diſturb the peace, or to offer violence or hurt to the perſon of any) ſuch aſſemblies bee not prohibited by any of theſe ſtatutes, nor vnlawfull; As if the Sheriffe, Vnderſheriffe, or Bailiffe, ſhal take power (what number they ſhall thinke good) to execute the kings proceſſe, &c. it is lawfull; ſo of other officers: See more hereof, *poſtea tit. Poſſe Comitatus*. 3. H. 7. 1. Br. Riots, 2.

So is it a lawfull aſſembly which is gathered together to runne at Tilt &c. by the Kings commandement.

So

So the aſſembly of people, and their vſe of Harneis vpon
Br.1. Midſomer night in London, being onely for diſport is lawfull; and though it be with a great aſſembly of people, and in armor, yet it being neither in *terrorem populi*, nor to do any act with force or violence againſt the peace, it is lawfull.

Alſo if diuers doe aſſemble and gather together, to drinke at an Alehouſe, or to play at Foot-ball, Bucklers, Beare or Bull baytings, Dauncings, Bowles, Cards, or Dice, or ſuch like diſports, this is no Ryott nor here prohibited; for theſe meetings vſually are not with any intent to offer or doe violence or hurt to the perſon, poſſeſſions, or goods of any other: neyther are they *malum in ſe*, they are in themſelues neither euil, nor vnlawful, though otherwiſe ſome of them are prohibited by Statute. *Vide antea titulo Games vnlawfull.*

But if any of the perſons aſſembled together for any the diſports aboue mentioned (or for the like,) came with any intent or purpoſe to breake or diſturbe the Peace, or to offer violence or hurt to the perſon of any, and ſhall make an Affray, or doe other outrage, this ſeemeth to be a Ryott, in ſo many as came with anie ſuch vnlawfull intent or purpoſe.

And if any of the perſons aſſembled together (to drinke, or play) at an Alehouſe, or for any the diſports aboue mentioned, or the like; ſhall fall out ſuddenly (without any former intention of any Affray) and in that their falling out they ſhall betake themſelues to ſundrie parts, and ſhall make an Affray, it ſeemeth
Lambt. 134. PR. 25. (by the opinions of ſome) that this ſhall be adiudged a Ryott in ſo many of both ſides, as ſhall be parties to that Affray or quarrell: but *quære* hereof, for that it was without any ſuch intent before their ſaid aſſembly, and done onely vpon the ſudden, and vpon a ſudden occaſion happening after their ſaid meeting; and againe, their ſaid aſſembly was at the firſt lawfull, or at the leaſt not prohibited by any of theſe Statutes, nor yet by the Common Law. *Co.* 11. 87.

But otherwiſe, if by agreement they ſhall meete againe and fight afterwards, that maketh it a Ryott, as being a new aſſembly vpon the former quarrell, and ſo their ſecond meeting was vpon an intent precedent to doe an vnlawfull act.

Concerning the lawfulneſſe, or vnlawfulneſſe of the act:

NOte, that the lawfulneſſe, or vnlawfulneſſe, of the thing done or intended, doth not alwayes excuſe or accuſe the parties *Lawfulneſſe of the act.*

to a Ryott &c. but ſo, that the manner and circumſtances of the fact, muſt alſo be conſidered.

For euerie man may aſſemble company to aide him in his houſe, againſt iniurie or violence: but if a man be threatned, that if he come to ſuch a place, he ſhal be beaten; in this caſe if he ſhall aſſemble any companie to goe thither with him (though it be to ſafegard his perſon) it ſeemeth to be within the compaſſe of theſe Statutes, and vnlawfull.

Euerie man in peaceable manner, may aſſemble meet compa- Cromp. 66.
nie (and may come) to doe any lawfull thing, or to remoue or caſt downe any common Nuſans.

Euerie priuate man, to whoſe houſe, or land, any Nuſans ſhall Co. 5. 101. & 9. 55.
be erected, made or done, may in peaceable manner, aſſemble a meete companie, with neceſſarie tooles, and may remoue, pull, or caſt downe, ſuch Nuſans (and that before any preiudice receiued thereby,) and for that purpoſe if need be, may alſo enter into the other mans ground.

A man erects a Weare croſſe a common Riuer (where people 35. Eliz.
haue a common paſſage with their Boates) and diuers did aſſem- Cromp. 66.
ble with Spades, Crowes of Iron, and other things neceſſarie for to remoue the ſaid Weare, & made a Trench in his land that did erect the Weare, to turne the water, ſo as they might the better take vp the ſaid Weare, and they did remoue the ſame Nuſans; this was holden neyther any Forcible Entry, nor yet any Ryott.

But in the Caſes aforeſaid, if in remouing any ſuch Nuſans, &c. the perſons ſo aſſembled ſhall vſe any threatning words (as to ſay, they will do it in ſpight of the other; or they will do it though they die for it, or ſuch like words) or ſhall vſe any other behauior, in apparant diſturbance of the peace, then it ſeemeth to bee a Ryott: and therefore where there is cauſe to remoue any ſuch Nuſans (or to doe any like act) it is the ſafeſt not to aſſemble any multitude of people, but onely to ſend one or two perſons, or (if a greater number yet) no more then are needfull, and onely with meet tooles, to remoue, pull or caſt downe the ſame, and that ſuch perſons tend their buſineſſe onely without diſturbance of the peace.

For the manner of doing a lawfull thing, may make it vnlawfull.

Alſo the maner of doing an vnlawfull act by an aſſembly of people, may be ſuch (and ſo handled) as that it ſhall not be puniſhed as a Ryott:

As

As if I ſhall aſſemble a meete companie to carrie away a peece of tymber, or other thing (whereto I pretend a right) that can not be carried without a great number; if the number be not more then are needfull for ſuch purpoſe, although another man hath better right to the thing ſo carried away, and that this act be a wrong and vnlawfull, yet is it of it ſelfe no Ryott, except there be withall threatning wordes vſed, or other diſturbance of the Peace.

Lambt. 182.

For the manner and circumſtances.

AS there muſt neceſſarily be three perſons at the leaſt, aſſembled together, to make a Ryott, &c. ſo their being together, and their demeanor, muſt be ſuch, as ſhall or may breed ſome apparant diſturbance of the Peace; eyther by threatning ſpeeches, turbulent geſture, ſhew of Armor, or actuall force or violence, (to the terror and fearing of the peaceable ſort of people, or to the emboldening and ſtirring vp of ſuch as are buſie headed, and of euill diſpoſition, by ſuch fact); or elſe it can be no Ryot, &c. For, as I ſaid before, the manner of doing a lawfull thing, may make it vnlawfull, *& e conuerſo.* *The manner.*

And therefore if diuers in one company, going to the Church, Fayre, or Market, ſhall goe armed; or one going to the Seſſions, or other like aſſembly, ſhall goe with his ſeruants in Harneis (to the terror of the people) though hee, or they, haue no intent to fight, or to commit any Ryott, yet this is a Rout by the maner of his or their comming, being needleſſe, diſordred, and againſt the Law. See the Statute 2. *Ed.* 3. *cap.* 3.

Lambt. 182.

P. Armor. 4.

But in the former Caſes, if they had gone in priuie coates of Plate, ſhirts of Maile, or the like, to the intent to defend themſelues from ſome aduerſarie; this ſeemeth not puniſhable within theſe Statutes, for that there is nothing openly done, in *terrorem populi.*

Cromp. 64.

One *N. W.* together with fourſcore perſons, came with Spades, Mattocks, Piſtolls, Swords, and Daggers, in the night, to a peece of ground (where Sir *Tho. St.* had made a great Weare croſſe ouer the Riuer of Trent in the Countie of Nott. to the great Nuſans of paſſengers, &c.) & there they made one or two little trenches to let out the water &c. And though it were lawfull to make the trenches, and to debruſe the Nuſans, yet for that they came with ſuch number and weapons, they were deeply fined in the Starre-Chamber. 36. *Eliz.*

35. Eliz. Cromp. 64.

Alſo one *Kemp* Lord of a Coppihold, did enter with twentie perſons, and cut his Coppiholdehs Corne with force, for that his Coppiholder would not compound with him for his Fine; and although the entrie of the Lord was holden lawfull, yet puniſhable as a Ryott in regard of his number and force. 31. & 32. Eliz. Cromp. 64.

In all caſes where three (or more) ſhall enter into lands, &c. with force (vpon the poſſeſſion of another) where their entrie is lawfull, yet it is a Ryott, by reaſon of the number and force: for the Statute of 5. *Rich.* 2. prohibiteth the entrie with force, or with multitude of people, although the Entrie bee (otherwiſe) lawfull. Cromp. 64.

What perſons may commit a Ryott, &c.

IF a number of women (or children, vnder the age of diſcretion) doe flocke together for their own cauſe; this is no aſſembly puniſhable by theſe Statutes, vnleſſe a man of diſcretion moued them to aſſemble for the doing of ſome vnlawfull act, as Maſter *Marrow* held.

Yet certaine women, that had apparrelled themſelues in mens apparrell, and had pulled downe ryottouſly a lawfull incloſure, were worthily puniſhed for the ſame in the Starre-Chamber. Lambr. 84. Cromp. 62.

Alſo women, and children, may commit a force; may commit Larcenie; and may be bound to the peace, as breakers of the peace. *Vide antea tit. Suertie for the Peace.*

Alſo women couert are holden to be within the Statute of *Merton cap.* 6. for rauiſhment of Wards; and within the ſtatute of Weſtminſter, 1. *cap.* 20. *de Malefactoribus in parcis*: and within the ſtatute of 8. *H.* 6. of Forcible Entrie; and within the ſtatutes of 1. *Eliz. cap.* 2. and 23. *Eliz.* for Recuſancie, although they be not named within any of theſe ſtatutes. Co. 72. & 11. 61.

Alſo if a woman couert ſhall commit any Ryott, or doe any treſpaſſe or other wrong, ſhee is puniſhable for it; and for a treſpaſſe done by the wife, or for a ſcandall publiſhed by her, the action lieth againſt both, *ſc.* an action of treſpaſſe, or of the caſe, ſhall be brought againſt the husband and the wife, and there the husband is chargeable to the damages, or fine, becauſe he is a partie to the action and iudgement, (See *paulo ant. ſub tit. Forcible Entrie*) But if a woman couert without her husband be indicted of a Treſpaſſe, Ryott, or any other wrong, there the wife ſhal anſwer, and be partie to the iudgement onely: and in ſuch caſe the fine Ibidem. Co. 11. 61. b.

ſet

set vpon the wife shall not be leuied vpon the husband; yet after the husbands death it seemeth such dammages or fine shall then be leuied of the wife her selfe, *quære*. And as for imprisonment, or other corporall paine, it shall be inflicted vpon the wife, and not vpon the husband for his wiues act or default.

22. Ass. 87.
43. E. 3. 18.
Br. Impri. 109.

If a Mayor and Aldermen, or Bayliffe and Burgesses, or the Fellowes of any other Societie, doe assemble in their common quarrell, and make a Ryot or Rout; this shall be punished in their owne priuate naturall persons, and not in the bodie politike.

Lambt. 185.

High Treaſon.

HIgh Treaſon (called in Law, *Crimen leſæ Maieſtatis*) is a grieuous offence, done or attempted againſt the eſtate Regal, *viz.* againſt the King (the head, life, and ruler of the Common-wealth) in his perſon, the Queene his wife, his children, Realme, or authoritie, as Glanuill.

To compaſſe the death of the King, the Queene his wife, or of their eldeſt ſonne and heire. 25.E.3.cap.3. P.1.

To intend or imagine their or any of their deaths, though they bring it not to effect, *ſc.* if they ſhall declare this by any open act, whereby it may be knowne, or to vtter it by words or letters. Stamf.1.h. Co.8.28. Br.34,29.

To intend to depriue the King, or to ſay that he will be King, after the Kings death, &c. Br.ibidem.

If one that is *non Compos Mentis*, doe kill, or attempt to kill the King, it is in him high Treaſon, wheras petie Treaſon, Homicide or Larcenie ſhall not be imputed to ſuch a perſon. Co.4.124.

One Conſtable pointed to another, ſaying to his friends, Behold K. *Edward* (who was then dead) and for thoſe words he had iudgement and execution as a Traytor. *Dyer.* 128. *Co.*7.10. obſerueth that the words were accompanied with other circumſtances; which appeare not in our vſuall printed bookes. Dyer.128.Abr.

Alſo to deflower the Kings wife, his eldeſt daughter being vnmaried, or his eldeſt ſonne and heyres wife, is high Treaſon. P.1.

To leuie warre againſt the King, &c. in his Realme, is high Treaſon. P.1.

So to conſpire to leuie warre againſt the King, &c. Dyer.98.

To practiſe with (a gouernor of) another countrey, to inuade this Realme, is high Treaſon. Dyer.298.

So to kill one that is ſent in the K. meſſage. 22. *Aſſ. Stamf.* 1.

To incounter in fight, and kill ſuch as be aſſiſting to the King in his Warres, or ſuch as come to helpe the King, is High Treaſon. 21.E.3.23.

Theſe two laſt Caſes were holden to be High Treaſon, before the ſtatute of 25. *Ed.*3.

To

P.1. To be adherent to the K. enemies, ayding them in his Realme, is high Treaſon.

Br.Treaſ.32. But if an alien enemie come to inuade this Realme, and be taken in warre, he cannot be indicted of Treaſon, but he ſhall be

Dyer.345.vide put to death by Martiall Law, *Co.* 7. 6. b. Otherwiſe it is of an alien whoſe King is in league, or at peace with our King, he ſhall be indicted and arraigned of Treaſon, and ſhall haue iudgement accordingly. An Engliſh Traytor pleading that hee is a ſubiect to a forreine Prince, ſhall notwithſtanding (vpon a *Nihil dicit* recorded) haue iudgement as a Traytor. *Dyer.* 300.

P.1,2. To counterfeit the Kings great ſeale, ſigne manuell, priuie ſig-
1.M.6. net, or priuie ſeale, is high Treaſon.

Br.3,17. So to take an old ſeale, and put it to a new Patent, &c. yet *quære* whether this be Treaſon, or but Miſpriſion.

Alſo *quære* of ſuch as without authoritie ſhal ſet the Kings ſeale vpon any writing, or ſhall fraudulently thruſt a writing (amongſt others) to the Seale, and ſo get it ſealed.

P.1,2. To counterfeit the Kings money, or any other coine which is
1.M.6. currant within this Realme, is high Treaſon.

Br.27. So to forge ſuch coine, though he vttereth it not.

P.4. To forge or counterfeit any coine, which is not currant in this
14.Eliz.3. Realme, is miſpriſion of Treaſon.

5.Eliz. To clippe, waſh, round, fyle, impaire, diminiſh, lighten, or fal-
18.Eliz. ſifie any coyne currant within this Realme, is Treaſon.
P.5,6.

1.& 2.P.& M. To bring any falſe money into this Realme, &c. knowing it to
P.3. be falſe, is high Treaſon; but to bring ſuch money into England

5.H.7.fol.10. out of Ireland, is but miſpriſion, though he knoweth it and vtte-
Br.19. reth it, *Quia Hibernia eſt quaſi membrum Angliæ.*

3.H.7.fo.10. If he which by the Kings Warrant, doth coyne money (either in England, Ireland, or elſewhere) maketh it much leſſe in weight then the auncient ordinance, or coyneth falſe mettall, it is Treaſon.

3.H.7.fo 10. To vtter falſe money made within this Realme, or other the
Dyer.266. Kings Dominions, knowing thereof, is miſpriſion of Treaſon.

25.Ed.3.2. To kill the Kings Chauncellor, Treaſurer, Iuſtice of eyther
P.1. Bench, Iuſtice in Eyre, Iuſtice of Aſſiſe, or Iuſtice of *Oyer* and *Terminer*, being in his place doing his office, is high Treaſon.

Stamf.3. Note, that the counſellers, procurers, conſenters, and aiders to
P.2,3,4,5,6. any of the aforenamed Treaſons, be all within the puruiew of the ſaid ſtatute of 25. *Ed.*3. *cap.*2. for in Treaſon all the offendors be principalls.

P.8. To conceale or keepe ſecret any high Treaſon, is Miſpriſion of Treaſon.

And all Receiuers, and Acceſſaries (to high Treaſon) after the offence,

offence, seeme to be in case of misprision. *Vide postea titulo Accessorie.*

If two or more doe conspire to commit high Treason, and some of them after doe commit and execute it; this is high Treason in them all by the Common Law. Dyer.98. Co 1.28.

Note also, that the aforesaid statute of 25.*Ed.*3.*cap.*2. is but a declaration and explanation of the Common Law before; for all the said Treasons in the said stat. mentioned, were Treason by the auncient Common Law of this Realme, before the making of the said statute. Co.8.Præface.

Treasons by Statute. Since which time of King *Edw.*3. diuers other offences were made Treason, as appeareth by the statutes 21.*R.*2. 2.*H.*5.6. 3.*H.*5.6. 8.*H.*6.6. 4.*H.*7.18. 22.*H.*8.9. 26.*H.*8.13. 27.*H.*8.2. 28.*H.*8.10.*et* 18. 31.*H.*8.8. 32.*H.*8.25. 33.*H.*8.21. 35.*H.*8.1. and first *Ed.*6. 12. all which were repealed againe by a stat. made 1.*M.Parliament.*1. or before.

Also since the aforesaid statute of repeale, there haue bin diuers other offences made or declared to be treason, whereof some were but as an addition to, or an exposition of the treasons before specified, and mentioned in the said statute of 25.*Ed.*3.*cap.*2.*viz.* the statutes 1.*M.*6. 1.*&*2.*Ph.et M.*11. 5.*Eliz.*11. 18.*Eliz.*1. and 14.*Eliz.*3. by which fiue seuerall stat. last mentioned, the counterfeiting of the Kings seale, or abusing his coine, and bringing in of false coine, &c. are in some particulars more fully prohibited then before, as may herein before appeare.

There are also diuers other offences made high Treason (by other statutes made since the beginning of the Reigne of Queene *Eliz.*) & those specially made for the preseruation of the said Qu. her heires and successors, and of the dignitie of the Imperiall Crowne of this Realme, and for the auoiding of the dishonors, inconueniences, and dangers growing to the whole estate, by meanes of the iurisdiction of the Sea of Rome, heeretofore vsurped within this Realme, &c. as hereunder appeareth.

The Bishop of Rome. Firſt, the mainteyning or extolling the authoritie of the Bishop or Sea of Rome within any the Kings Dominions, and the procurers, counsellers, ayders, and mainteyners thereof, and euerie of them; 5.Eliz.1. P.Rome.1.

For the first offence they shal incurre the danger of *Præmunire*, the second offence is high Treason.

Also the bringers ouer of any bookes, that shall mainteyne, set forth, or defend any such authoritie; and the Readers and hearers of such bookes, that shall iustifie them:

And such as shall deliuer any such bookes to others, with allowance and liking of the same:

And

Dyer. 282. Co.7.Præface. And the Printers and vtterers of such books within the realm: All and euerie such offendors, are (by the Iudges) resolued and construed to be within the meaning of the same Stat. of 5. *El.ca.*1 & their first offence to be a *Præmunire*, the second high Treason.

5.Eliz.1. P.Crowne 6, & 8. Againe, the refusall of the oath for the Kings supremacie (in all causes, and ouer all persons, &c.) after lawfull tender thereof made, the first refusall is a *Præmunire*, the second refusall is high Treason.

3.Ia.4. P.Recus.45. The second refusall of the oath of Allegeance, being tendred according to the Statute, is a *Præmunire*.

13.Eliz.2. P. { Crown.2. / Præm.5. Againe, to obtaine from Rome, or from any claiming authoritie from thence, any Bull or writing, (the effect whereof is, to absolue, and reconcile all those that will forsake their due obedience to the K. and yeeld themselues to the B. of Rome); or to giue or take absolution, by colour of any such Bul; or to publish or put in vre, any such Bull: euery such act shalbe high treason aswel in the offendors, as in the procurers, abbettors, & counsellers to the fact.

And all ayders, comforters, and mainteyners of any such offendor, after the fact shall incurre a *Præmunire*.

13.Eliz.2. P.Rome.4. To conceale such Bull (or writing), or such absolution offered them, and not within sixe weekes to disclose it to some of the K. Priuie Councell, is Misprision of Treason.

23.Eliz.1. 3.Iac.4. P.Rome.7. To practise beyond the Seas, or vpon the Seas, or elsewhere) within the Kings Dominions, to absolue, perswade, or withdraw, any subiect, or any within any his Highnesse Dominions, from their obedience to his Maiestie; or to reconcile them to the Pope, or to draw them to the Romish Religion, for that intent; or to moue them to promise obedience to the Sea of Rome, or to any other Prince, euerie such person, and their procurors, ayders, counsellers, and mainteyners, knowing the same, are all in case of high Treason.

3.Iac.4. To be willingly absolued, perswaded, withdrawen, or reconciled, as aforesaid, or to promise any such obedience; euerie such person and their procurers, counsellers, aiders and mainteyners, (knowing the same) shall be adiudged traytors; except they submit themselues according to the Stat. within sixe dayes after their returne into this Realme, &c. *Vide antea tit. Recusants.*

P.Rome.8. To conceale any such offence, and not within twenty daies to disclose it to some Iust. of P. or other higher Officer, is Misprision of Treason by the statute 23. *Eliz.*1. *P.Rome.*8.

27.Eliz.2. P.Iesuits.2. Againe, for any Iesuite, Priest, or other Ecclesiasticall person (made by any authoritie from the Bishop of Rome) to come into, be, or remaine, in any of the Kings Dominions contrarie to this statute, is high Treason.

To

To receiue, relieue, aide, or maintaine any ſuch Ieſuite, &c. (being at libertie, and knowing him to be a Ieſuite &c.) is felony. P.Ieſuits.3,10.

To conceale ſuch a Ieſuite, &c. *ſc.* not to diſcouer them to ſome Iuſtice of peace, or other higher officer, within twelue dayes, is puniſhable by fine and impriſonment:

And the Iuſtice of peace or other ſuch officer, to whom ſuch a perſon ſhalbe diſcouered, if within twentie eight dayes, they giue not information thereof to ſome of the Kings Councell, &c. they ſhall forfeit two hundred markes.

If any of the Kings ſubiects (not being Ieſuite, or Eccleſiaſtical perſon), which are or ſhall be brought vp in any Seminarie or Colledge of Ieſuits, or Seminarie beyond the Sea, ſhall not (within ſixe moneths after Proclamation in that behalfe to be made in London, &c.) returne into this Realme, and within two daies after ſuch returne (before the Biſhop of the Dioceſſe, or two Iuſt. of P. of the countie where he ſhall arriue) ſubmit himſelfe to the K. Lawes, and take the oath of Supremacie, ſet forth 1. *Eliz.* 1.) then euery ſuch perſon, which ſhall otherwiſe return or come into this Realme, or any other his Maieſties Dominions without ſuch ſubmiſſion, ſhall be adiudged a Traytor. 27.Eliz.2. P.Ieſuits.4.

For (as one ſaith) it may iuſtly be feared, not onely of all Ieſuits and Seminarie Prieſts, but alſo of all ſuch other (Ieſuited) perſons whatſoeuer, that ſhall come into any his Maieſties Dominions, or returne into this Realme, contrarie to this Statute, That it is not Faith, but Faction; not Truth, but Treaſon; not Religion, but Rebellion, which is the cauſe of their comming.

To conuey, deliuer, or ſend, yeeld or giue, any reliefe to or for any Ieſuite, or Prieſt, &c. or other perſon abiding in any Seminarie beyond the Seas, &c. is a *Præmunire*. 27.Eliz.2. P.Ieſuits.5.

To bring into this Realme any *Agnus Dei*, Croſſes, Pictures, Beads, or ſuch like ſuperſtitious things, conſecrated by authoritie from the Pope, and to deliuer them, or to offer or cauſe them to be deliuered to any ſubiect of this Realme, is a *Præmunire*, aſwell in ſuch perſon, as alſo in them that ſhal receiue any ſuch thing, to the intent to vſe or weare it. 13.Eliz.2. P.Rome.5.

The perſon to whom ſuch *Agnus Dei* &c. ſhall be offered, muſt apprehend the partie, or diſcloſe his name (within three dayes) to the Ordinarie, or ſome Iuſt. of P. of that county; and if he receiued any ſuch thing, he muſt deliuer the ſame within one day to a Iuſt. of P. of that Countie, where the partie ſo receiuing the ſame ſhall then be reſiant or happen to be. And that Iuſtice of peace within fourteene daies muſt diſcloſe the ſame to one of the Kings Councell, vpon danger of a *Præmunire*. 13.Eliz.2. P.Rome.6.

Miſpriſion.

Misprision.

THere be also certaine offences which by the Common Law, are Misprision of Treason, or at least punishable in the same degree, and more, as

22.E.3.13. Stamf.38.b. PR.117. To draw a sword to strike a Iustice, sitting in place of iudgement is misprision of Treason.

Ibidem. To strike a Iuror in the presence of the Iust. sitting in place of iudgement.

Stamf.38.c. To strike another in Westminster hall, sitting in any of the K. Courts there.

Ibidem. And in the three former Cases, the offendor shall haue iudgement as in misprision of Treason, and besides shall haue his right hand cut off.

Ibidem. If one of the Kings Iust. do arrest one who made an Affray before him sitting in place of iustice, and a stranger shall rescue the prisoner, whereby he escapeth; this is misprision of Treason in them both.

Stamf.37.d. Cromp.44. Note, that euerie Treason, or Felonie do include misprision, so that where any person hath committed Treason or felony, the K. may cause the offendor to be indicted & arreigned but of misprisi.

Stamf.37. Misprision is properly, when one knoweth that another hath committed Treason or felony, but was not consenting thereto, and will not discouer the offendor to the K. or his Councell, or to some Magistrate, but conceales the offence. *Stamf.*37.

The forfeiture. For misprision of Treason, the offendor shall forfeit to the K. his goods & chattels for euer, & the profits of his lands during his life, & also shalbe imprisond during his life. *Br.Treas.*19. *et Sta.*38.

3.H.7.fo.16. For misprisi. of felony the offendor shalbe only fined, as it seems.

See St.26.H.8.13. St.5.Ed.6.11. P.Forf.2. Rastal.Tres.12. For high Treason, the offendor shall be hanged, cut down aliue and quartered, and he shal forfeit all his lands & goods, &c. to the King: yea at this day his lands intailed shall be forfeited (*vide Stamf.*187. *et Co.*1.103. *et.*7.33,34. *et Dyer.*332. *Plo.*237.b.249.b 554.b. *et* 559.) and his wife shall loose her Dower, and his bloud shalbe corrupted, sauing in certaine cases.

P.Prem.1,5. Br.Præm.6,10. Co.7.Præface, & 11,63. In case of *Præmunire*, the offendor shal forf. all his lands (which he hath in Fee) for euer, and all his goods and chattels to the K. but his lands whereof he hath an estate Taile, he shall forfeit only during his life, and shall be imprisoned during his life.

Now for the offendors in high Treason, misprisi. of Treason; and *Præmunire*, although the Iust. of P. (by their Commission, nor by Stat.) cannot meddle with the in the very point of their offences, sauing in som particulars, & that by way of enquiry only, w^ch you may see *Lbt.*496. yet for that all treasons & such other offences are against the peace of the K. & of the realme, therefore vpon complaint

complaint made to the Iust. of Peace, or other knowledge had by him of any such offendors, it shall be his part to cause such offendors to be apprehended, and to ioine with some other Iust. of P. in taking their examination, and the information vpon oath of such as bring them, or of others that can proue any thing materiall against them, and to put the same in writing (vnder the hands of the informers) and then to commit the offendors to the Gaole: and also to binde ouer by Recogn. all such as doe declare anie thing materiall, to appeare and to giue euidence against such offendors, before the Lords of the Kings Maiesties Priuie Councel, or elsewhere, when they shalbe called, vpon reasonable warning, and after to certifie their doings therein to some of the Lords of his Maiesties said Councell.

Note, that all Treasons, misprision of Treason, and concealement of Treason, done or committed out of the Realme, shall be enquired of, and tried within the Realme. See Stat. 35. *H.* 8. *cap.* 2. *P. Treason.* 10. *& Dyer* 287. 298.

Petie Treason.

PEtie Treason is when wilfull Murder is committed (in the estate Oecomenicall) vpon any subiect, by one that is in subiection, and oweth faith, duetie, and obedience, to the partie murdred; as in these cases following: 25. Ed. 3. cap. 2. P. Treason. 7.

If a seruant malitiously killeth his, or her Master or Mistresse; this was petie Treason by the Common Law, *Stamf.* 10. i. Ib. & 12. Ass. 30

A seruant of the age of thirteene yeares, killed her Mistresse, it was adiudged her petie Treason. Ibidem. Fitz. Cor. 118.

A seruant that is departed out of his seruice, and a yeare after, killeth his Master, vpon malice conceiued when he was in his said seruice, it is pety Treason. Stamf. 10.

A seruant doth procure another to kill his Master, who killeth him in the seruants presence; this is pety Treason in the seruant, and Murther in the other.

But if the estranger doth kill the Master in the seruants absence, then the seruant is only accessarie to the Murder, but it is no pety Treason in him.

A seruant conspireth with a stranger to robbe his Master, and at a time appointed in the night, he letteth in the stranger into the house, and ledde him to his Masters chamber, and the stranger killeth his Master, the seruant standing by; this is pety Treason in the seruant, and Murder in the stranger. Dyer. 128.

A seruant commaunds one to beate his Master, and he killeth him; this is pety Treason in the seruant if he be present. Cromp. 20.

A

Cromp.20. A ſeruant vpon malice pretended, ſhooteth at an eſtranger, and miſſeth him, and killeth his Maſter, being by; this is pettie treaſon in the ſeruant, (though he intended no hurt to his Maſter, yet becauſe he intended murder thereby.

The wife. The wife malitiouſly killeth her husband; this is petty treaſon.

The husband malitiouſly killeth his wife; this is but Murder.

The reaſon of this difference, is for that the one is in ſubiection and oweth obedience, and not the other.

Dyer 332. The wife and a ſeruant doe conſpire to kill the husband, and hee killeth him in the wiues abſence: this is Pettie Treaſon in them both.

Dyer ibid. The wife and a ſtranger doe conſpire to kill her husband, and he killeth her husband in the wiues abſence: this is no Pettie treaſon in the wife, but murder in the ſtranger, and ſhe ſhalbe hanged as acceſſary to Murder.

Cromp.20.21. Alſo where the wife or ſeruant, (procuring, conſpiring, or practiſing ſuch Murder) at the time of ſuch murder, is in the ſame houſe, though they bee not preſent thereat, but are in another roome, yet it is Pettie treaſon in them, as it ſeemeth by two caſes reported by Mr. *Crompton in 4. & 5. Marie.*

Plow. 474. Co.9 81. See more in the title of Murder. The wife poiſoneth a thing, to the intent to poiſon her husband therewith, the husband eateth of it, and becommeth very ſicke thereof, but recouereth: after, an eſtranger eateth thereof, and dieth thereof, this is (onely) murder in the wife.

Cromp.20. The wife poyſoneth an apple, to the intent to poiſon a ſtranger therewith, and layeth it (to that purpoſe) in a ſecret place, and the husband by chaunce eateth of it, and dieth thereof within a yeare and a day, this is pettie treaſon in the wife, for that ſhee intended murder thereby.

Cromp.20. The wife poiſoneth an apple, or other thing, and deliuereth it to *B.* (knowing nothing of the poiſon) to giue to *C.* and *B.* giueth it to the husband (without the aſſent of the wife) who eateth thereof in the wiues abſence, and he dieth thereof: this is Pettie Treaſon in the wife.

The childe. 11.E.3.17. Co.7.13.b. The childe maliciouſly killeth the father, or mother; this is Pettie treaſon (although the father or mother at the ſame time giue neither meate, drinke, nor wages to ſuch childe:) But it is Treaſon in the child, in reſpect of the duetie of nature violated.

Cromp.21. A Baſtard killeth his mother, this ſeemeth Pettie treaſon; for the mother is certainely knowen.

Daliſons Rep. 1.M.1. The ſonne, or daughter in law, kill the father or mother in [illegible] with whom they dwell and doe ſeruice, and haue meat & drinke, it is Pettie treaſon, although ſuch childe take no wages: but the Inditement ſhalbe by the name of Seruant.

A Clerke. A Clerke or any Ecclesiasticall person maliciously killeth his Ordinary, or Superiour, to whom he oweth obedience; this is pettie Treason. 2.Ed.3.cap.2. P.Treas.7.

Note further, that whatsoeuer act will proue murder betweene strangers, the same will make pettie Treason from the seruant to his master, from the wife to her husband, from the childe to the father or mother, and from the Clerke to his Prelate or Ordinarie; *Mutatis mutandis.*

Breake prison. Breaking of prison, whereby prisoners that were therein for Treason, doe escape; this also is pettie Treason. 1.*H.*6.5. Stanf.11.

Inditor. Also it hath been adiudged pettie Treason in some books, and felony in some other, for an Inditor (in case of treason, or felony) to discouer the Kings counsell and their fellowes (*sc.* to discouer to others what person they haue indited, or if they haue indited any, then to shew to others what they haue done therein &c.) But now that offence is taken onely to be fineable to the King. Stanf.11,36. Fitz. Corone 272.

Punishment The punishment for pettie treason is this, The man so offending, shalbe drawen and hanged: the woman shall be burned aliue, in case as well of pettie Treason, as of high Treason, 1.*Ri.*3.4. But in case of felonies, the iudgement both of the man and woman is to be hanged. 1.R.3.4. Br.Treas.12. & 30.

Forfeiture. The forfeiture for pettie Treason is; the King shall haue all his goods; and for his lands the King shall haue *annum, diem & vastum*, and the Escheate thereof shalbe to euery Lord, of his owne proper fee.

The Iustices of peace may inquire of pettie Treason, as of felony, and out of their Sessions, euery Iustice of peace may deale with the offenders therein, as in case of felonie, by examination of the offenders, by taking information against them, and binding ouer the Informers to the generall Gaole deliuery, and by committing the offendors to the gaole.

Of

Of Felonies by the Common Law.

FElonies by the Common Law, are of diuers sorts; as Homicide, Burglary, Theft, burning of houses, Rescous, and Escape.

Homicide most properly is, *hominis occisio ab homine facta*; for if a man be killed by a beast (as a horse, or dogge) or by any other thing or mischaunce, although that be *hominis cedium*, (of which two words Homicide is deriued) yet in such cases it is not aptly nor vsually said that homicide is committed, but onely a man is said to be slaine. *Homicide.*

Lamb. 233. Others doe thus define or describe it: Homicide is the felonious killing of one man by another within the realme, and liuing vnder the King protection.

But to kil a man beyond the seas, or to strike & giue one a mortall wound beyond the seas, or vpon the sea, whereupon hee dieth vpon the land (within this Realme:) these Homicides are not punishable as felony; for that they cannot be enquired of, nor tried here: for in criminall cases the rule is, *Vbi quis delinquit, ibi punietur*: See *Co.* 2. 93. 6. 47. Yet in Treason it is otherwise: See hereof *paulo antea, tit. Treason, &c.*

Lamb. 233. But whether he that is slain, be an Alien, or a Denizen, an Englishman or a stranger, it maketh no difference (if he liue vnder the Kings protection.)

Co. 7. 13. 17. Co. 7. 17. Cromp. 24. To kill a man attainted of felony, or treason, is felony. So to kill a man attainted of felony (by vtlary) is felony: For none may kill or put to death any of these, but the Officer of Iustice, and by warrant.

Co. 7. 14. Also to kill a man attainted vpon a *Præmunire*, is felony.

Note, that the Kings Protection belongeth by the Law of Nature, to all these, and the King may protect and pardon them all.

Homicide is threefold:
- *Voluntate, et est duplex.*
  - Murder.
  - Man-slaughter, or Chance-medley.
- *Casu*, or Misaduenture, this also is considerable after two sorts, *sc.* whether it happen in doing a thing
  - Lawfull, or,
  - Vnlawfull.
- *Necessitate*, this is sometimes
  - Cõmanded, *sc.* in executiõ of iustice.
  - tollerated
    - for aduancemẽt of iust.
    - *Se defendendo.*
  - Prohibited. See *postea tit. Homicide.*

But first to write something of *Felo de se.*

Felo de se.

If a man kill himselfe (either with a meditate hatred against his owne life, or out of distraction, or other humor) he is called *Felo de se*; And he shall forfeit to the King his goods and chattels reall and personall, and his debts due by specialtie (but no debts due to him without specialtie, or vpon simple contract, *Dyer.* 262. 16 *Ed.* 4. 7.) Dyer. 262. Plo. 261.

But hee shall not forfeit his lands, neither shall his blood bee corrupt: see *Fitz. Coron.* 362. & 426. Fitz. Cor. 301. Plo. 261.

If a man doe giue himselfe a deadly wound, and dieth thereof within the yeare and a day after, All his goods, &c. which hee had at the time of the blow giuen, or at any time after, shall be forfeited to the King. Plo. 262.

But the goods of *Felo de se*, be not forfeited till his death be presented and found of record; neither can those goods be claimed by prescription, (by Lordes of Liberties, &c.) but by the Kings graunt. Co. 5. 110. 21. H. 7. 33.

If *A.* doe strike *B.* to the ground, and then draweth his knife to kill *B.* and *B.* lying vpon the ground, draweth his knife to defend himselfe, and *A.* is so hastie to kill *B.* that he falleth vpon *B.* his knife, and so *A.* is slaine: here *A.* is *felo de se.* 44. Ed. 3. 44. Fitz. Coron. 94. 286. 295.

But if one that wanteth discretion, killeth himselfe (as a infant, or a man *non compos mentis*) he shall not forfeit his goods, &c. Stanf. 19. Co. 1. 99. Plo. 260.

If a lunatike person killeth himselfe, he shall forfeit his goods, (*sc.* if he killeth himselfe out of his lunacie, otherwise if hee kills himselfe during his lunacy.) Fitz. Co. 324. Co. 4. 125.

The enquiry of such a felony, belongeth to the Coroner, And yet if *felo de se*, bee cast into the sea, or so secretly buried, that the Coroner cannot haue the sight of his body, and so cannot enquire thereof; then the Iustices of peace, or any other hauing authoritie to enquire of felonies, may enquire thereof (for that it is Felonie) and a presentment before them, intitleth the King to his goods. Co. 5. 110.

Murder.

OF old time euery killing of one man by another, was called Murder (of the effect) becausse death ensued of it: Afterward Murder was restrained to a secret killing only, and therefore *Bracton* and *Britton* in their definition of Murder, calleth it, *Occulta occisio nullo præsente &c.* But since murder hath bene and is taken in a middle degree, neither so largely as it first was, nor so narrowly as Mast. *Bract.* and *Britton* speaketh of it; For Murder is now construed to bee, when one man vpon malice pretended, prepensed, Plo. 261. Stanf. 18. Plo. 261.

or

or precedent, doeth kill another felonioufly, *viz.* with a premeditate and malicious mind, whether it be openly, or priuily done, this is felonie of death.

This malice pretended or precedent, may be either apparant (as where there was a precedent falling out, Or where there is a lying in waite, Or a time and place appointed, &c.) Or it may be leſſe apparant or manifeſt, and yet ſhall be implyed, preſumed and taken to be out of malice precedent, by the manner and circumſtances thereof:

Co.9.67. As where one killeth another, without any prouocation, the Law implieth and adiudgeth it to haue proceeded of malice prepenſed: Therefore if one ſuddenly, and without any ſhew of quarrell, or offence offered, ſhall draw his weapon, and therewith kill another.

Cromp.23.27. Or if one ſhall bee reading of ſome Booke, or otherwiſe buſied, ſo as he ſaw not the partie that ſhall ſtabbe or ſtrike him (and he dieth thereof,) or ſhall bee going ouer a ſtile, &c. and another ſhall kill him, ſuch offenders ſhall ſuffer death, as in caſe of wilfull Murder.

1.Iac.cap.8. And accordingly hath the Statute, 1. *Iac.* well prouided, that if one ſhall ſtabbe, ſtrike, or thruſt another, that hath not then a weapon drawen, or hath not then firſt ſtricken the other, and if the partie ſo ſtabbed, ſtricken, or thruſt &c. die thereof within ſixe moneths after; the offendor ſhall ſuffer death as a wilfull murderer.

Co.4.40. 89.66.68. To kill the Sheriffe, or any of his Officers, in the execution of the Kings Proceſſe, or in doing their office, is murder in him that killeth the officer.

Co.9.69. But if he be not an officer knowen, hee muſt ſhew his warrant before hee arreſt the partie (or vpon the arreſt, if the other ſhall demaund to ſee it,) or elſe it ſeemeth the Arreſt is tortious; And where the arreſt is tortious (bee it by an Officer knowen, or by another) there the killing of him that maketh ſuch an vnlawfull arreſt, is no Murder, but Man-ſlaughter onely, as it ſeemeth.

Co.9.61.

Againe, where an officer hath the Kings Writ, or other lawfull Warrant, though it bee erronious, yet in the executing thereof if he be ſlaine; this is murder.

Co.9.68. For the officer is not to diſpute of the validity of his Warrant, or the authoritie of the Court, or of the Iuſtice of peace, that ſent the Warrant.

Co.4.89. 89.68. To kill any Magiſtrate, or Miniſter of Iuſtice, in the execution of their office, or in keeping the peace (according to the duetie of their office) is Murder, and the Law implieth it to bee of malice

prepenſed; And therefore if the Sheriffe, Iuſtice of peace, High Conſtable, petrie Conſtable, Watchman, or any other Miniſter of the King, or any that come in their aid, be killed in doing their office, it is Murder.

The Sheriffe, or Iuſtice of Peace come to ſuppreſſe Riottors, and one of the Sheriffe or Iuſtices company is ſlaine by one of the Riotters, this is murder in all the Riottors that be there preſent. 22. Eliz. Cromp. 33.

A Conſtable with others to ayd him, doe come to part an affray; if the Conſtable or any of his company ſhall bee ſlaine in doing this his office, it is murder, in him that killed him, although the affray were on the ſudden, and though it were in the night, for when the Conſtable commands them in the Kings name to keep the peace, although they cannot know him to be a Conſtable, yet at their perill they ought to obey him, vpon ſuch commaundement. Co. 4. 40. Co. 9. 66.

And in theſe caſes, the killing of ſuch an officer, or of any of their company, is in Law intended to be by malice pretended: *ſc.* that the murderer had a malicious reſolution in him, to oppoſe himſelfe againſt the Law, the Officers thereof, and the Iuſtice of the Realme.

Alſo if a Theefe that offereth to rob a true man, killeth the true man in reſiſting him, it is Murder, of malice pretended. *Plo.* 474. *Co. 9. 67.* Plow. 474.

A man caried his father (being ſicke, and againſt his will) in a froſty and colde time, from one towne to another, and the father died thereof; this was adiudged murder in the ſonne. 2. E. 3. 18.

A Harlot deliuered of a childe, hidde it in an Orchard (it being aliue) and couered it with leaues, and a Kite ſtroke at it, and the child died thereof, and the mother was arraigned and executed for Murder. 2. Eliz. Cromp. 24.

A man hath a beaſt that is accuſtomed to do hurt, & the owner knowing thereof, doeth not tye him, or otherwiſe keepe him faſt ſhut vp, but ſuffereth him to go at libertie, and after the beaſt killeth a man, this is felony in the owner of the beaſt; for by ſuch ſufferance, the owner ſeemeth to haue a will to kill. Fitz. Cor. 311. Stanf. 17. Exod. 21. 29.

And in theſe three laſt caſes, *voluntas reputabitur pro facto*, death enſuing thereupon; For it may plainely appeare, that they had a will and meaning of that harme which followed, which will in them doeth amount to malice, and ſo maketh their offences to bee Murder: And in ſuch caſes where death enſueth, *Nihil intereſt vtrum quis occidat, an cauſam mortis præbeat.*

If a man dieth in the hand of a Phiſicion, or Surgeon; this is no felony in the Phiſicion, or Surgeon. F. Coron. 163.

But

4 [illegible]3. Lambt.236. But if one which is no Phiſitian, or Surgeon, will take a cure vpon him, and his patient dyeth vnder his hand, this hath beene holden to be felony; but *quære*, of this laſt caſe, for it cannot be diſcerned whether the patients death commeth, by any wilfull default, in the party taking ſuch cure vpon him, or by the patients infirmity: againe there appeareth in them no will to do harme, but rather to do good; and then the Statute of 34. *H.* 8. 8. leaueth ſo great a liberty of ſuch practiſe to vnskilfull perſons, that it will be hard now to make it felony. But if a Smith, or other perſon (hauing skill onely in dreſſing or curing the diſeaſes of horſes, or other cattell) ſhall take vpon him the cutting, or letting bloud, or ſuch like cure of a man, who dyeth thereof, this ſeemeth to be felony; for the rule is, *Quod quiſque norit, in hoc ſe exerceat.*

4 H. 8. Surg. 2.

Cromp. 23. Two playing at tables, fall out in their game, and the one killeth the other with a dagger ſuddenly, this was holden murder, in one *Emeryes* caſe, before *Bromeley* at the aſſiſes in Cheſhire about 27. *El.* as M. *Crompton* reporteth.

Cromp. 25. The husband, vpon words between him and his wife, ſuddenly ſtroke his wife with a peſtell, whereon ſhee dyed, and it was adiudged Murder at the Aſſiſes at Stafford before *Walmeſley*. 43. *Eliz.*

Quære the reaſon why it ſhould bee murder in theſe two laſt caſes, conſidering there appeareth no precedent malice, and that it was done vpon the ſudden, and vpon prouocation.

A. hath wounded *B.* in fight, and after they meet ſuddenly, and fight againe, and *B.* killeth *A.* this ſeemeth murder, and malice ſhal be intended in *B.* vpon the former hurt: but if now *A.* had killed *B.* this ſeemeth but manſlaughter in *A.* for his former malice ſhal be thought to be appeaſed by the hurt he firſt did to *B.*

Lamb. 247.

Two are in ſuit, and they meete ſodenly, and quarell about the ſuit, and the defendant killeth the plaintiſe, this ſeemeth murder. *Tamen quære.*

Alſo wilfull killing of another by poyſon, was, and is murder by the common law. See *Stamf.* 21. & *Br. Indictment* 41. *Poyſoning.*

Mo. 474. The husband gaue a poyſoned apple to his wife, to the intent to kill her, and ſhe not knowing of it, gaue it to her child, who died thereof, this is murder in the husband, and yet he loued that child deerely: and ſo had it beene if a ſtranger of his owne accord had after eaten thereof, and dyed thereof: for the putting of

Co. 9 81. poiſon into the apple &c. vpon an euill and felonious intent, maketh it murder, whoſoeuer be killed thereby.

Co. 4. 44. *A.* bringeth drinke that was poyſoned (knowing of it) to *B.* who aduiſed *B.* to drinke of it, telling him it would do him ſuch good, by reaſon of which perſuaſion *B.* dronke of it (in the abſence

ſence of *A.*)and dyed thereof,this was adiudged murder in *A.*

If one giueth corrupt victuall to another, to the intent to poyſon him,and he dyeth thereof within the yeare and day, this is murder. Cromp.30.

But if a man ſhall prepare rattes-bane &c. to kill rattes &c. and ſhall lay this in certaine places to that purpoſe, without any euill intent,and another man finds and eates this,and dyeth thereof,yet this is no felony. Co.9.81.

The Maſter vpon malice precedent,goeth to kill another,and taketh his ſeruants with him (but they know nothing of their Maſters intent) and the Maſter and his ſeruants doe meete the other,and do aſſault and kill him, this is murder in the maſter, and but manſlaughter in the ſeruants. Plo.100.

Note that when a man hath malice to one,and intending, and endeuoring to kill him, hee killeth another man, this is murder whomſoeuer he killeth,*vide Plo.*101. *Dyer* 128. *Fitz.Coron.*262. *Stamf.*16. For his intent was to do murder. Plo.474.

Nay if two fight vpon malice pretended, and in their fight a ſtranger (that would part them) is killed, this is murder in them both,if it may not be proued which of them did kill him. Lambt.238.

A man vpon malice,ſhooteth at one, or lyeth in waite to kill one, and killeth another vnwittingly, in both theſe caſes it is murder. Plo.474.

Note alſo that in all caſes where a man commeth or goeth about to do any thing vnlawfull,as to kill,beat, or diſſeiſe another, or to do any other treſpas, and in doing this,he killeth any man, this is murder.See *Cromp.*24.*b.*

One ſtealing peares in another mans orchard, and the owner came and rebuked him,and the other killed him,this was adiudged murder.4.*Mariæ.* Cromp.24. Lambt.237.

Alſo where a man commaundeth another to beate *A.* and hee beateth him, ſo as *A.* dyeth thereof, this is murder in him that gaue this commandement to beat him,for that he commanded him to do an vnlawfull act, by reaſon whereof the killing of a man enſued. Plo.475. f.Coron.314.

Note alſo,that if diuers perſons come in one companie to do any vnlawfull thing, as to kill,rob,or beate a man,or to commit any riot,or affray,or to do any other treſpas, and one of them in doing therof,killeth a man,this ſhalbe adiudged murder in them all that are preſent of that party,although they did but looke on &c.See *Stamf.*40.*Fitz.Indictment*22. Br.Coron.172 f.Coron.350. Co.11.5.

Nay if they be not preſent,yet if they be in the ſame houſe,or vpon the ſame ground, it is murder in them all, See the Lord Dacres caſe. *Cromp.*25.

Note

Plo.100. See here.

Note alſo that all that are preſent, and aiding, abetting, or comforting to another to doe murder, are principall murderers, although they ſhal giue neuer a ſtroke. See more 4.*H.*7.18. 13.*H.*7. 10. *Fitz.Coron.*309. *Co.*9.67.112. *&*.11.5.

As if *A.* and *B.* fall out, and appoint the field, and they meet accordingly, each of them bringing company with them, *A.* killeth *B.* this is murder in all thoſe that came with *A.*

Note alſo that in caſe of murder, it is not materiall who giueth the firſt blow: for if he that is ſlaine gaue the firſt blow, yet if there were malice prepenced in the other, it is murder in him that killed him.

Alſo in caſe of poyſoning, the party poyſoned muſt die thereof, within a yeare and a day, after the poyſon receiued.

Coron.303. Alſo if a man do beate or hurt another, whereof he dyeth, to make it murder or other homicide, the party hurt muſt dye within a yeare and a day next after the hurt done, or ſtroke giuen. But to haue an appeale, it ſhall haue relation to the death, and not to the ſtroke; ſo as the appeale muſt be brought within the yeare after the death, and not after the ſtroke.

Co.4.42.

§Coron.263. Stamf.21.c. See Exod.21. 22,23. It was death by the law of God. Lambt.229. Note alſo in murder, or other homicide, the party killed muſt be in *Eſſe*, (*ſc. in rerum natura*, For if a man kill an infant in his mothers wombe, by our law, this is no felony: neither ſhall he forfeit any thing for ſuch offence: and whether (vpon a blow or hurt giuen to a woman with child) the child die within her body, or ſhortly after her deliuerie, it maketh no difference: But if the mother of the child dye within a yeare and a day after ſuch hurt done to her, and vpon that hurt, this is felony.

In caſe of murder, the offendours ſhall not haue the benefit of clergy.

Nomb. 35.31. Note alſo that by the law of God, no recompence was to bee taken for the life of a murderer, *Nomb.* 35.31.

13.R.2.ca 1. P.Pardon 3. Plo 502 And by diuers old ſtatutes, no charter of pardon ought to be granted to any perſon in caſe of murder, or other homicide, ſaue only where a man killeth another in his owne defence, or by misfortune, See *P. Pardon* 1.

And by our law at this day, a pardon of all felonies, will not diſcharge murder, except the pardon bee with a *Non obſtante &c.* or that murder be expreſly mentioned in the pardon.

Neither will a pardon of all felonies diſcharge a man that is attainted of felony, except alſo the attainder and the execution be pardoned. See 9.*Ed.*4.29. *Co.*6.13.b.

Note that he which hath a pardon for felony, if afterwards during his life, he ſhall break the peace, he may be hanged, notwithſtanding his pardon: for by the pardon, the offence, *tegitur non tollitur.*

tollitur. See the Statute 10. *Ed.*3. *cap.*3. *P. Pardon* 5. & 3. *H.*7.7. where one was executed vpon this ſtatute, for making an affray after his pardon. 3. H.7. fo. 7.

None haue authority to pardon any treaſon, murder, or other felony, or any acceſſary to the ſame, ſaue only the king; it being one of his royall prerogatiues. 27. H.8. 25. P. Prer. 17.

Manſlaughter.

MAnſlaughter in the right ſignification thereof implyeth all manner of homicide, and is the generall, aſwell to murder, as to the reſt: Neuertheleſſe for that in common ſpeech it is reſtrained to manſlaughter by chancemedlye alone, in that ſence I will here write of it.

Manſlaughter, otherwiſe called chancemedlye, is when two do fight together vpon the ſoden, and by meere chance, without any malice precedent, and one of them doth kill the other, this alſo is felony of death.

And yet in caſe of manſlaughter, the offendor ſhall haue the benefit of Clergie: and by the law of God, there was a citie of refuge appointed for ſuch to flie vnto. *Exod.*21.13. *Deutronom.* 19.3.4.

Two fall out vpon the ſoden and fight, and the one breaketh his weapon, and a ſtranger ſtanding by (yet being none of their companie) lendeth him a weapon, and therewith he killeth the other, this is manſlaughter aſwell in him that killed the other, as in the ſtranger, who lent him his weapon. Cromp. 26.

A. and *B.* fall out vpon the ſoden, and fight, and *A.* is ſo feirce that he runneth vpon the others weapon, and is ſlaine, yet this ſeemeth manſlaughter in *B.* for he ſhould haue fled to ſome wall or ſtreet &c. *Quære.*

And if *B.* had fled to a wall &c. and *A.* purſueth him, and *B.* perceiuing that *A.* would aſſault him, holdeth his weapon betweene them, and *A.* runneth vpon the weapon, and is ſlaine, this is homicide in his owne defence, and for which *B.* ſhall forfeit onely his goods: but otherwiſe it had beene if *B.* had fallen and lying vpon the ground had drawen his knife or dagger, and *A.* falleth thereon, and ſo is ſlaine, for then *B.* could not flie nor make any other defence for his ſafetie, and therefore here *B.* ſhall not forfeit his goods, but bee diſcharged, for *A.* in manner killed himſelfe. See hereof *poſtea.* PR. 122. b.

Two combate together vpon the ſoden, and part, and preſently after meete and fight againe, and the one killeth the other: or the one preſently fetcheth a weapon and commeth and killeth the

the other, theſe ſeeme but manſlaughter, for that it is done all in one continuing fury, which was at the firſt without malice, and could not in ſo ſhort time be appeaſed, or aſſwaged. *Cromp.* 23. *b.* 24. *a.* 26. *a. b.*

Lambt. 246. So if two haue borne malice the one to the other, and bee reconciled, and after meeting againe, they fall out vpon new occaſion, and by agreement immediately they goe into the field and fight, and the one killeth the other, this ſeemeth but manſlaughter, *(cauſa qua ſupra)* vnleſſe the reſpite or diſtance of time or place had beene ſuch, that by reaſonable coniecture their heate might be aſſwaged.

See more of manſlaughter, before in murder, and after in miſaduenture.

What perſons are chargeable with Homicide.

Fitz. N. Br. 202. 21. H. 7. 33. Plo. 19. Co. 4. 124. IF one that is *Non compos mentis*, or an Ideot, kill a man, this is no felonie; for they haue no knowledge of good and euill, nor can haue a felonious intent, nor a will or mind to do harme: And no felony or murder can be committed without a felonious intent and purpoſe; for it is called *felonia, quia fieri debet fellio animo. Co.* 4. 124. *b.* *Non compos mentis.*

So it is if a lunatike perſon killeth another during his lunacie, *(Co.* 4. 125.*)* for all acts done by him in his lunacie, are as the acts of an Ideot.

Now there be 3. ſorts of perſons accompted *Non compos mentis*, to this purpoſe, and the like.

Co. 4. 124. 1 A foole naturall, who is ſo *(a natiuitate)* from his birth, and in ſuch a one there is no hope of recouerie.

2 He who was once of good and ſound memorie, and after (by ſicknes, hurt, or other accident, or viſitation of God) looſeth his memorie.

3 A lunatike *qui gaudet lucidis interuallis*, and ſometimes is of good vnderſtanding and memorie, and ſometimes is *non compos mentis.*

An infant of eight yeares of age, or aboue, may commit homcide, and ſhall be hanged for it, *viz.* If it may appeare (by hyding of the perſon ſlaine, by excuſing it, or by any other act) that he had knowledge of good and euill, and of the perill and danger of that offence. See 3. *H.* 7. 1. *&* 12. *Stamf.* 27. *Fitz. Coron.* 118. 129. *& Br. Coron.* 133. *Infant.*

Plo. 15. But an infant of ſuch tender yeares, as that he hath no diſcretion or intelligence, if he kill a man, this is no felonie in him. 3. *H.* 7. 1. *b.*

If

If one that is dumbe killeth a man, it is felonie: yet *quære* how he ſhalbe arraigned.

A man borne deafe and dumbe, killeth another, that is no felony: for he cannot know whither he did euill or no; neither can haue a felonious intent &c. See hereof *tit. Suretie for the peace antea.* f.Coron.193. Stamf.16.

Note in theſe former caſes, ſuch acts happen by an inuoluntary ignorance, and therfore the law accompteth ſuch act of theirs to be no felony.

But if a man that is drunke, killeth another, that is felonie; for it is a voluntrary ignorance in him, in aſmuch as ſuch ignorance commeth to him by his owne act and follie. Plo.19 Co.4.125.

Miſaduenture.

HOmicide by miſaduenture or misfortune, is when any perſon doing of a lawfull thing, without any euill intent, happeneth to kill a man: by the law of God there was a citie of refuge appointed for ſuch perſon to flie vnto. *Nomb.*35.15.*&* 22.*Ioſh.* 20.3. And by our law this is no felony of death: for he ſhall haue his pardon of courſe for his life and his lands; yet he ſhall forfeit his goods, in regard that a ſubiect is killed by his meanes. See *Stamf.*16.*a.b. Fitz.Coron.*69.302.*&* 354.

As if a ſcholemaſter, in reaſonable manner beating his ſcholler, for correction only: or a man correcting his child, or ſeruant in reaſonable manner; and the ſcholler, child, or ſeruant, happen to dye thereof, this is homicide by miſaduenture. See Exod. 21.20.21. Stamf.12.c.

So if a man ſhooting at buts, prickes, or other lawfull marke, killeth one that ſtandeth or paſſeth by.

So if a carpenter, maſon, or other perſon doth throw or let fall a ſtone, tile, or peece of timber from an houſe, or wood, or other thing from a cart &c. (and giueth warning thereof) and another is killed thereby.

So if a labourer that is felling, or cropping of a tree, and the ſame, or part thereof falleth and killeth a man. 6.E.4.7. f.Coron.398.

So, if the head of his hatchet, or other toole, falleth from him, and happeneth to kill one ſtanding by. *Deut.*19.15.accord. Plo.19.

So, if a man be (in due and conuenient time) doing any other lawfull thing, that may breed danger to ſuch as paſſe by, and ſhal giue warning thereof, ſo that ſuch as paſſe by, may heare and flye the perrill, and yet another paſſing that way, ſhall bee killed therewith.

And ſo if men ſhall runne at Tilt, Iuſt, or fight at Barriers togither by the Kings commaundent, and one of them doth kill another. 11.H.7.23. See Br.Coron, 229, contra.

See *pag. ſequent.* In theſe former caſes, and the like, it is miſaduenture, and no felony of death.

Fitz. 246. c. & 248. b. And in theſe caſes of miſaduenture, and in the former caſes of infants, and of other perſons, being *Non compos mentis*: As alſo where one killeth another in defence of his perſon, they ſhal be diſcharged in this manner, *ſcil.* if they deſire to purchaſe their pardon, they muſt, vpon their triall, plead not guilty, and then this ſpeciall matter being found by verdict, they ſhall bee bailed, and then they muſt ſue forth a *Certiorari*, to haue this record certified to the Lord Chauncellor of England, who thereupon ſhall make them a Charter or Pardon of courſe vnder the great ſeale without ſpeaking or ſuing to the king for it. See *Stamf.* 15. *t.*

Stamf 18. c. But if a man be doing of an vnlawfull act, though without any euill intent, and he happeneth, by chance, to kill a man, this is felony, *viz.* manſlaughter at the leaſt, if not murder, in regard the thing he was doing, was vnlawfull. *Vnlawfull act.*

Stamf. 12. c. As ſhooting of arrowes, or caſting of ſtones into a highway, or other place, whither men do vſually reſort.

11. H. 7. Br. Coron. 229 Fighting at Barriers, or running at Tilt or Iuſts without the Kings commaundement, whereby a man is ſlaine: although it were by the kings commaundement, yet it was holden felonie by the Iuſtices *tempore H.* 8.

11. H. 7. 23. Cromp. 26. b. & 29. a. Playing at hand-ſword, bucklers, foot-ball, wreſtling, and the like, whereby one of them receiueth a hurt, and dyeth thereof within the yeare and day: in theſe caſes, ſome are of opinion, that this is felony of death: ſome others are of opinion, that this is no felonie of death, but that they ſhall haue their pardon of courſe, as for miſaduenture, for that ſuch their play was by conſent, and againe there was no former intent to do hurt, nor any former malice, but done only for diſport and triall of manhood.

PR. 123.

Fitz Coron. 302. & 354. See Nomb. 35. 23. Br. Coron. 229 A man caſteth a ſtone at a bird, or beaſt, and another man paſſing by is ſlaine therewith, *quære* whether this bee manſlaughter, or but miſaduenture: The opinion of *Fineux* chiefe Iuſtice in 11. *H.* 7. *fol.* 23. is, that if a man caſt a ſtone ouer a houſe, and killeth a man, this is no felonie, but miſaduenture. But maſter *Brooke* abridging this caſe, ſaieth, it ſeemeth to bee no law, but where the caſting of the ſtone is lawfull, as, where a maſon is vntiling of a houſe, &c. but to caſt it for pleaſure, and not in lawfull labour ſeemeth to be felony; and ſo was the opinion of M^r. *Bracton*, and Maſter *Stamford.*

Stamf. 12. c. 18. c.

Caſuall death.

ALſo a man may be ſlaine by other caſualty, then by the hands or meanes of another man, as by the fall of a houſe, pitte, or tree, &c. vpon him, or bee killed by a bull, beare, or other beaſt, &c. or be killed by ſome fall, which he himſelfe taketh.

And in theſe, & the like caſes, obſerue theſe rules,

1 Firſt, if a man bee ſlaine in any ſuch manner, yet if it bee by the meanes or procurement, or wilfull default of another man, this ſhalbe felony in the party procuring or cauſing it.

2 The thing which is the cauſe of ſuch caſuall death, ſhall be forfeit to the king, taken for a deodand, and diſtributed in almes by the K. Almner: But the Almner hath no intereſt, as it ſeemeth, in ſuch goods, but hath onely the diſpoſition of the kings almes *durante bene placito*, ſo that the king may grant them to any other. See *Co.* 1. 50. *Dyer* 77.

3 The forfeiture ſhall haue relation from the ſtroke giuen; ſo as the partie ſelling thereof, *ſc.* of ſuch thing as was cauſe of ſuch death, after the ſtroke giuen, taketh not away the kings right, but that he ſhall haue it as forfeited, notwithſtanding ſuch ſale. Plo. 260.

4 *Deodands* are not forfeited, vntill the matter be found of record, and therefore they cannot be claimed by preſcription. Co. 5. 110.

5 The Iury which finde the death of the man, muſt alſo finde and appreiſe the deodand; And the Sheriffe ſhal be charged with the price of ſuch deodand, and ſhall leuie the ſame of the towne where it falleth, although it were not committed to the towne to keepe it, and therefore it behoueth the towne to ſee it forth comming. Co. 5. 110. F. Coron. 248. Stamf. 21. P. Coron. 10.

6 If he that is ſo ſlaine, bee vnder 14. yeares of age, nothing ſhall be forfeit to the King, as Deodand for him as it ſeemeth. F. Coron. 89. Stamf. 21.

And if a man that is vnknowen, bee found dead in the field, his apparell and money about him ſhall bee giuen to the poore, &c. And if hee were knowen, then his goods ſhall bee deliuered to his Executors or Adminiſtrators, or to the Ordinary; but ſhall not bee taken as a Deodand, in either caſe (for they are not of the nature of a Deodand) they being no cauſe of his death. F. Indictm. 17 Stamf. 21.

Deodand quid.

Next, what ſhall bee forfeited and taken for a Deodand; The olde rule is, *Omnia quæ mouent ad mortem, ſunt Deodanda:* And yet beſides, Deodands may bee of ſome things that a man ſhall mooue or fall from, though the thing it ſelfe moues not; as to fall from a ſhippe, cart, mow of corne or hay, &c. So as Deodands are any goods which doe cauſe, or are occaſion of the death of a man by miſaduenture. *Coke ibidem.* See more, *Fitzherb. Coron.* Dyer. 7. Co. 5. 110.

314.326.341.342.348.388.389.398.401.409.

The enquiry of ſuch caſuall death, belongeth alſo to the Coroner: but if the Coroner cannot haue the ſight of the bodie, and ſo cannot enquire thereof, *quære* how the king ſhall be intituled to the goods.

Homicide vpon neceſsitie.

SOmetimes the Iuſtice of law commandeth a man to be put to death, As when the Iudge hath pronounced ſentence of death againſt an offendor (attainted by due courſe of law) there (in execution of iuſtice) an officer, or other perſon thereto lawfully deputed, may orderly execute ſuch iudgement or ſentence according to his warrant: and ſuch ſentence or iudgement pronounced by the Iudge, and after lawfully executed by the officer, leaueth the name and nature of murder, or homicide, and is called Iuſtice, or rather iudgement, which is the lawfull execution of iuſtice. *Commanded*

But if the officer, or other perſon, ſhall proceede therein, vpon his owne authority, without warrant, or *Non obſeruato ordine iuris*, as where an offendor hath iudgment giuen vpon him to be hanged, if the ſherife, or other officer &c. ſhal behead him, or by other meanes put him to death, this is felony in ſuch officer &c. Stamf. 13.

Alſo if a ſtranger, being not thereto lawfully deputed, ſhal (vpon his owne authority) put to death an offendor that is condemned to die, this is felonie. Stamf. 13.

Nay if the Iudge himſelfe, who gaue the iudgement of death vpon an offendor, ſhal after put the ſame offendor to death, it is not iuſtifiable by him.

Sometimes alſo the iuſtice of Law, tollerateth and ſuffereth a man to be ſlaine, *ſcilicet*, for the neceſſarie execution and aduancement of iuſtice, which otherwiſe ſhould be left vndone: And in ſuch caſe, the Law of the Land imputeth it not as any fault to him that ſhall ſo kill a man, but freely diſchargeth him thereof without the K. Pardon. *Tollerated.*

As a ſherif, bailife, or any other perſon who hath a lawful warrant to arreſt a man indited of felony, may well iuſtifie the killing of him, if he will not ſuffer himſelfe to be arreſted, and yeeld himſelfe, and that they cannot otherwiſe take him. F. Coron. 261. Stamf. 13.

And ſo euery perſon whatſoeuer without any warrant may apprehend a felon vpon huy and cry, or otherwiſe, and if he will not yeeld to be arreſted, but ſhall reſiſt, or flie, the purſuer may kil him without blame. F. Coron. 261. Stamf. 13.

An offendor in felony is led towards the Gaole, and breaketh F. Coron. 288. & 328.

away from these that conduct him, and maketh resistance, or flyeth, his conductors may iustifie to kill him, if they cannot otherwise take him againe.

A prisoner in the gaole attempteth to escape, and hauing broken his irons, striketh the Gaoler (comming in the night to see his prisoners) and the Gaoler slayeth such a prisoner, this is no felony. 22.ass.55.

Riotters, and such as shall make any forcible entrie, or deteyner, against the statutes, if they shall resist the Iustices of peace, or other the kings officers, or shall not yeeld themselues, but shal stand at their defence, when the Iustice of peace, or other officer shall come to arrest, or remoue them, if any of them happen to be slaine, this is no felonie in the Iustices of peace, or officer, or in any of their company that killed such riotters &c. Cromp.23.30. & 158.

The Sherife, or his Baylife, or other Officer commeth (by vertue of the Kings Processe) to arrest another for debt, or trespasse, who maketh resistance, and thereupon is slaine by such officer, or any of his companie, this hath bin taken to be no felony, *tamen quære.* Stamf.Prerog. fol.46. German.141. Cromp.24.30.

But in all these former cases, there must bee an ineuitable necessitie, *sc.* that the offendor could not bee taken &c. without killing of him. Stamf.13.e.f.g.

Also in an appeale of felonie, if the appellant and appellee do ioine to trie it by battell, and therein the one doth kill the other: as the law doth allow such triall, so doth it allow the euent to bee iustifiable, as depending vpon the iudgement of God, who giueth victory according to trueth. 37.H.6.21.

Se defendendo tollerated. Also when one man killeth another in the necessarie defence of himselfe, or his, thereby to deliuer himselfe, his possessions, or his goods, or some other persons, which he is bound to defend from perill, and which cannot otherwise escape, this is homicide tollerated vpon necessity: As

To kill an offendor which shall attempt feloniously to murder or rob me in my dwelling house, or in or neere any highway, horse way, or foot way, or that shall attempt burglarily, to breake my dwelling house in the night; this is iustifiable by my selfe, or by any of my seruants, or company. 24.H.8.ca.5. P.for.f.1. f.Coron.303. & 305. Co.5.91.& 11. 82. Exod.22.2.

And this being so found by verdict vpon triall, we shall be all discharged without losse of life, lands, or goods, or pardon.

To kill a theefe or murderer in the defence of my person, my house, or goods, was no felony, but iustifiable by the common law, before the statute of 24.*H.*8.*ca.*5. *Stamf.*14. See *Co.*5.91.& 11.82. 26.ass.32. f.Coron.261. 305.& 330.

And if one or moe come to burne my house, I, or any of my 26.ass.23.

my ſeruants, may iuſtifie to ſhoot forth of my houſe at them, and to kill them, for ſuch intent of theirs is felonious.

But if a man ſhall forcibly get, and keepe poſſeſſion of a houſe, and the other ſhall come in the night and fire this houſe, they within cannot iuſtifie to ſhoote and kill him, or any of his company, for that they in the houſe were there vnlawfully. See *Cromp.26.b.* *Prohibited.*

f.Coron.305. See here 178. Co.5.91. If one commeth (in the day time) to my houſe, to beate mee, and doth make an aſſault vpon me in my houſe, and fighteth with mee, and I kill him in defence of my perſon, yet in this caſe I ſhall forfeit my goods, and muſt haue the kings pardon, except it be found, that the aſſailant came with a felonious intent to kill or rob me.

And if one commeth (in the day time, or in the night) to enter into my houſe, pretending title thereto, and to put mee out of my poſſeſſion, and I kill him, this ſeemeth to bee manſlaughter in me.

Stamf.15.a. Note if one kil a true man in defence of his perſon, there ought to bee ſo great neceſſitie, that it muſt bee eſteemed to bee ineuitable, or otherwiſe it will not excuſe: and therefore hee that ſhall bee ſo aſſaulted, muſt firſt flie as farre as he can, and till hee bee letted by ſome wall, hedge, ditch, preſſe of people, or other impediment; ſo as he can flie no further without daunger of his life, or of being wounded, or mayhemed: and yet in ſuch caſe hee ſhall bee committed till the time of his triall, and muſt then get his pardon for his life and his lands, (which pardon notwithſtanding hee ſhall haue of courſe) but hee ſhall looſe and forfeit his goods and chattels, for the great regard which the law hath of a mans life. *Co.5.91.b.* See hereof *paulo antea tit. Felony by caſualtie.* *The penaltie.*

Co.5.91.

6.E.1.ca.9. P.Pardon.1. *A.* maketh an affray vpon *B.* and ſtriketh *B.* and *B.* flyeth ſo far as he can for ſauing his life, before any ſtroke giuen by *B.* and *A.* continueth his aſſault, whereupon *B.* doth alſo ſtrike *A.* and killeth him, this is homicide in his owne defence. otherwiſe it ſeemeth to ſome, if *B.* had ſtroken the firſt blow, or had ſtroken before hee had fled: and yet by other good opinions the firſt ſtroke, or who began the affray, is not material, but the whole matter will conſiſt vpon the ineuitable neceſſitie (*ſc.* whether the ſaid *B.* who killed *A* could not haue eſcaped with his life &c. without killing *A.*) for otherwiſe it will not excuſe *B.* for *cuncta prius tentanda*, And as it is a charitable, ſo it is a ſafe principle (in theſe caſes) not to trie an extremitie, till thou haſt tried all meanes.

Stamf.15.

f.Coron.284. & 286. Stamf.15. Alſo it is holden in the former caſe, if *B.* (before hee had fled) had ſtriken *A.* and giuen him diuers wounds, that yet if he fly to a ſtreight

ſtreight before he giue *A.* the mortall wound, and then he giueth him his deaths wound, this is homicide in his owne defence.

But in the former caſe, if *B.* vpon malice prepenced had ſtroken *A.* and then *B.* flyeth to a ſtraite or wall, and *A.* purſueth him and ſtriketh him, and *B.* killeth *A.* thereupon, this is murder in *B.* for the malice prepenced was the ground and beginner hereof. f. Coron. 38. Crom. 22. 28 b.

Yet if there had beene former malice betweene *A.* and *B.* and they meete ſodenly, and *A.* aſſaulteth *B.* and *B.* before any ſtroke by him giuen flyeth ſo farre as he can, and *A.* purſueth him, and then *B.* killeth *A.* this ſeemeth to be homicide in his own defence notwithſtanding the former malice.

Copſtones caſe; There was malice betweene *Copſtone* and one *S.* and they had fought diuers times, and after met ſodenly in London ſtreete, and *C.* told *S.* that he would fight with him, and *S.* anſwered that hee had nothing to ſay vnto him, and *S.* went to the wall, and after *C.* aſſaulted *S.* and then *S.* ſtroke and killed *C.* and it was found that *C.* began the affray, and S. was thereupon diſcharged without forfeiting any thing. But that was by force of the ſtatute 24. *H.* 8. *ca.* 5. 15. El. Cromp. 27.

A man in fight falleth to the ground, there his flying &c. is not neceſſary &c. See here *pag.* 214.

Alſo if a theefe aſſaults to rob or kill me, I am not bound to fly to a wal &c. as I muſt in caſe a true man aſſaults me. Stamf. 14.

If an Officer of iuſtice, or Miniſter of the law, in execution of his office, be aſſaulted, hee is not bound to flie to a wall &c. as other ſubiects are. Co. 9. 68.

Alſo the ſeruant may iuſtifie the killing of another, in defence of his maſters perſon, or houſe, if the hurt cannot be otherwiſe auoided. *Br. Coron.* 63. 21. H. 7. 39.

Alſo the ſeruant may iuſtifie the killing of him, who robbed and killed his maſter, ſo that it be done preſently.

In the defence of the poſſeſſion of my goods, I may iuſtifie to beate him that ſhal wrongfully take them from me: but I cannot iuſtifie to kill him, except he be a theefe.

So then to kill a true man in defence of my perſon (in caſe where there is an ineuitable neceſſitie, *ſc.* that I firſt ſhall flie ſo far as I can for ſauing my life &c. this is no felonie of death &c. But otherwiſe it is to kill a true man in defence of my houſe, Lands, or Goods, that is manſlaughter (at leaſt) as it ſeemeth.

If any forreſter, parker, or warreiner, or any in their company, ſhall kill an offendour in their forreſt, parke, or warreine, which (after huy and crie leuied to keepe the peace, and to obey the

the law) will not yeeld themſelues, but will flie, or defend themſelues by violence; this is no felony: But *quære*, if there were any former malice in ſuch Keeper.

Cromp. 30.

Burglarie.

BVrglary, is when one or moe in the night time, doe breake a dwelling houſe, or a Church, or the walles, or gates of a citie, or walled towne, with an intent to doe felony, although hee or they carry away nothing; yet it is felony, and the offenders ſhall be hanged, and ſhall not haue the benefite of their Clergie.

22. E. 3.

The time. First for the time: Burglary cannot bee committed in the day time, but onely in the night, for all Inditements of Burglarie, be, *Quod noctanter fregit*: And the night (to this purpoſe) beginneth at the Sunne ſetting, and continueth to the Sunne riſing; And therfore to breake a houſe, &c. after the Sunne ſetting, and before it be darke; or after day light in Summer, and before the Sunne riſeth, is Burglary.

Br. Coron. 185. Stanf. 30. Co. 11. 36. 21. H. 7. See the title, Watch.

The manner. Next, for the manner; It is holden (by ſome good opinions, that if a man breake the houſe to doe felony, and yet entreth not, it is no Burglary; and that the Inditement muſt bee *fregit & intrauit*; And yet (by the opinion of *Shard*, 27. *Aſſ.* 38. and by the opinions of Sir *Anthony Browne*, Sir *Edw. Montague*, and Sir *Rob. Brooke*, late chiefe Iuſtices of the common Plees, and others, as Maſt. *Crompton* reporteth) if a man do but attempt or enterpriſe to breake or enter into a dwelling houſe by night, to the intent to rob, or kill any perſon there, though hee make no actuall entrie, yet it is a full and compleat Burglary:

Stanf. 30. Dyer 99.

Cron. p. 31. 32. 33.

As to put backe the leafe of a window, with his dagger.

To draw the latch of the doore.

To turne but the key, being on the inner ſide of the doore.

So to breake the glaſſe windowe, and to draw out any goods there with a hooke, &c. 26. *Eliz. at Staff. Aſſiſes.*

So to breake a hole in the wall, and to ſhoote in thereby at any within the houſe.

So (the doore being opened by ſome of the houſe) if any the the attemptors ſhall diſcharge a Dagge againſt any in the houſe, and in diſcharging his Dagge ſhall hold his hand ouer the threſhold, though he ſet no foot ouer.

26 Eliz.

So if vpon an attempt of Burglarie, they within the houſe, ſhall caſt out their money for feare, and the attemptors take it away.

And

And yet there is no actuall entrie made in any of these cases.

But if a Thiefe setteth but his foot ouer the threshold, or into any part of the house to commit felony, this much more shall conuict him of Burglary.

Also one being let downe the chimney in the night to commit felony, it was adiudged Burglary by Sir *R. Manwood*, chiefe Baron, and yet he broke not the house. Cromp. 32.

So is it to come into the house by the helpe of a key.

So if suddenly one come into the house by night, the doores being open, and the owner fleeth to his chamber, and the offender is taken shouing at the chamber doore.

So it is, if theeues pretending that they bee robbed, &c. shall come to the Constable, and pray him to make search for the Felons, and going with the Constable into a mans house to search, they rob the good man of the house; this is Burglary.

So if a seruant conspiring with another to robbe his Master, shall open his masters doore or window in the night, and the other entreth thereat; this is Burglary in the stranger, by the opinion of Sir *Roger Manwood*. 21. Eliz. Termes. 34

And yet the house was not broken in any of these cases.

But if one commeth into my house in the day, and there hideth himselfe till night; or if I shall lodge one in my house, and in the night he robbeth me, *&c.* goeth out of my house, and taketh away some of my goods with him, yet this is no Burglary, for that he broke not my house: for the first case it was so holden at Derbie. *Ass.* 32. *Eliz. Cromp.* 34.

Also if diuers come to commit Burglary, and but one of them entreth and commit it, the rest standing about the house, or not farre off, to watch that no helpe shall come; this is Burglay in all that company. 11. [illegible]

The place. Now concerning the place, it may bee either publique, or priuate; publique, as the Church, or walles, or gates of a Citie, or walled towne: priuate, as a dwelling house; And here commonly it is no Burglary, vnlesse some person bee at that time within the house.

And yet if a man hath a dwelling house, and he and all his family (vpon some occasion) are part of the night out of the house, and in the meane time one commeth and breaketh the house, to commit felony, this is Burglary. Co. 4. 40.

So if a man hath two dwelling houses, and sometimes dwelleth at the one, and sometimes at the other, and hath a family or seruants in both, and in the night when his seruants are out of Co. 4. 40.

the

the house, the house is broken by theeues; this is Burglary. Adiudged, 38. *Eliz.*

Cromp. 33. If one breaketh a Chamber in Lincolnes Inne, (or in any other house of Court, or Chauncery, or in any Colledge in Cambridge, or Oxford, &c.) in the night, to the intent to commit felonie there; this is Burglary, although there were no person in the same chamber; For that Colledges and houses of Court and Chauncery bee entire houses, whereof such chamber is parcell; So that if any person shall bee in any other chamber within the same house or Colledge at the same time, it is Burglary.

Cromp. 32. One *P.* was arraigned of Burglarie, *anno* 22. *Eliz.* for that hee assaulted one of his companions of the Inner Temple London, in his chamber there, to haue killed him in the euening, &c. but had his pardon.

1. Ed 6. Br. Coron. 180 Lamb. 256. Also the breaking (in the night) of a stable, barne, or other out house adioyning, or neere the dwelling house, to the intent to steale, is Burglary, though he take nothing.

At Summer Assises at Cambridge, *anno Dom.* 1616. two men were condemned for Burglary before *Sir Iames Altham*, Knight, for robbing a backhouse of *Robert Castle*, Esquire, in the night, which backhouse was some eight or nine yards distant from his dwelling house, and onely a pale reaching betweene them; So that though this offence be not committed in the very bodie of the dwelling house, but in some other house neere vnto it, and beeing parcell of or belonging to the dwelling house, it is Burglary.

Co. 11. 37. But a Boothe or Tent in a Faire or Market, are not esteemed in law for a dwelling house, nor the breaking therof in the night time to be Burglary; although the robbing of them bee made as penall as Burglary, if the owner, his wife, children, or seruants, were within the same.

22 Ass 95. Stanf. 126. Co. 11. 31. Lasty (to make it Burglary) the purpose and intent for which the offendor commeth, must of necessitie be, to kill, or rob some person, or to commit some other felony, otherwise it is neither Burglary nor Felony. *The intent.*

13 H. 4. 7. F. Coron. 267. And therefore to breake a house in the night, to the intent to kill any person therein, it is Burglary, although he neuer touch him.

F. Coron. 185 & 264. So it is, if the purpose were to robb, although the offendor taketh away nothing.

Stanf. 30. Co. 11. 31. But if a man breake and enter an house by night, of purpose onely to beat a man, that is but trespasse.

And if the intent were to commit a Rape, which some thinke

to

to be no Felony by the Common Law, but onely a Treſpaſſe: then there is ſome doubt, ſaieth Maſter *Lambert*: But Maſter *Crompton* ſaith, that if a man breaketh another mans houſe in the night, and rauiſheth a woman there, this is no Burglary: For ſaith hee, Rauiſhment is no Felonie by the Common Law, as Burglary is, although it bee Felony at this day by the Statute: *tamen quære*; for it may ſeeme by Maſter *Bracton*, *Glanuil*, and *Stamford*, That by the ancient Common Law it was Felony. The wordes of Maſter *Bracton lib.* 2. are thus, *Olim quidem corruptores virginitatis & caſtitatis ſuſpendebantur, &c. modernis tamen temporibus aliter obſeruatur, quia pro corruptione virginis, amittuntur membra, &c.* And a little after, *Adelſtanus; raptus mulierum ne fiat; defendit tam lex humana, quam diuina: Et ſic fuit antiquitus obſeruatum, quod ſi quis obuiauerit ſolam, cum pace dimittat eam, &c. Si autem contra voluntatem ſuam, &c. iactat eam ad terram, foriſfacit gratiam ſuam, &c. Quod ſi concubuerit cum ea, de vita & membris ſuis incurrat damnum, &c.* And with this Maſter *Glanuil* alſo agreeth. *fol.* 112.

Lambt. 260. Cromp. 32. Stam. 21. c. 22. & 23. Felony.

Alſo amongſt the lawes of Saint *Edmund*, ſometimes King of this realme, you ſhall finde this law. *Qui cum Nunna vel ſanctimoniali fornicatur, emendetur ſicut homicida; A multo fortiori*, then ſaith Maſter *Stamford*, ſhall he be puniſhed, if hee had rauiſhed her: So as Rape at the firſt, ſaith *Stamf.* was grieuouſly puniſhed, vntill the time of King *Edward* the firſt, who ſeemed to mitigate the paine thereof by the Statute of Weſtminſter, 1. *cap.* 13. which gaue two yeares impriſonment and fine: But ſpying the miſchiefes enſuing vpon the ſaid Law, at his next Parliament holden at Weſtminſter, called Weſtminſt. 2. *cap.* 34. he made the offence of Rape to be felony againe.

Weſtm. 2. 34. P. Rape. 1.

Note alſo by *Britton, fol.* 17. it is not Burglary in an Infant of fourteene yeares of age; nor in poore perſons that vpon hunger ſhall enter a houſe for victuall vnder the value of twelue pence; Nor in naturall fooles, or other perſons that bee *non compos mentis*; But *quære*, of poore entring for victuall at this day.

Cromp. 33. See Plo. 19. a

Theft.

THeft, is the taking away of another mans goods, with an intent to ſteale them, againſt (or without the will of him whoſe goods they be. And this is of two ſorts; Robbery, and Larceny.

Robberie.

Robberie.

Dyer 224. Stamf. 27.d. RObberie (in Latine called *Rapina*) is properly the felonious taking of any thing from the perſon of another, againſt his will, and putting him in feare thereby: and heere although the thing taken, bee but to the value of an halfepenie, yet it is felonie, for which the offendor ſhall ſuffer death, without benefit of Clergie.

As if one by the high way aſſaulteth me, and taketh away my purſe, money, or goods.

2. Ed 4. 28. Stanf. 27. But if a Theefe aſſaulteth mee to robbe mee, and biddeth me deliuer my purſe, but taketh nothing from mee, in regard that I (being too good for him) ſhall apprehend him, or ſhall leuie Hue and crie, whereby he is taken; this is taken to be no robbery nor felonie at this day.

Stamf. 27.g. And yet the aſſault onely, to rob me, hath bin (in former times) holden to be felony, as appeareth by the Bookes. 27. *Aſſ. pl.* 38. & 13. *H.* 4. 7. 24. *Ed.* 3. 42.

10. Eliz. Cromp. 34. In this former deſcription of Robbery, the word (taking) is largely to extended againſt the offendor, ſo that although the theefe taketh nothing from my perſon, yet if he aſſaulteth me, and vpon his aſſault he threatneth to kill mee, if I deliuer him not my my purſe, and thereupon I caſt my purſe down vpon the ground, and he taketh it away: this is Robbery.

Cromp. 34. So if one draweth his ſword vpon me, and biddeth me deliuer my purſe, and I refuſe, and after hee prayeth me to giue him a peny, and I doe ſo, yet it ſeemeth, this is robbery, for by the aſſault I was put in feare, and out of that feare I gaue him this money to be rid of him.

Stam. 37. e. So if a Thiefe doe onely aſſault mee to rob mee, and I deliuer him my purſe with mine owne hand, yet this is robbery in regard the fact of mine proceeded from feare, or by his menacing, &c.

Cromp. 35. So in flying from the theefe, I caſt my purſe into a buſh, to ſaue it, and the thiefe ſeeth me and taketh it away; this is robbery, for in this caſe had they not put mee in feare, I ſhould not haue caſt my money from me.

Cromp 35. So if one aſſaults me to rob mee, and I flying away from him, my hat falleth off, and the thiefe taketh it vp and carrieth it away; this is Robbery.

10. Eliz. Cromp. 34. So if a thiefe comes, and biddeth mee deliuer my purſe (without drawing any weapon, or other force vſed) and I deliuer him my purſe, and he finding but two ſhillings therein, deliuereth me all againe, yet this is robbery.

So

So if Theeues doe take a man, and by threats compell him to sweare to bring them money (at another time) or else that they will kill him, by force whereof hee bringeth them the money accordingly; this is Robbery. 42.Ed.3.14. 4.H.4.3. Stanf.17.f.

One came to a Fisherman going in the high way to Market with Fish to sell, and desired to buy some fish of him, and he refused: whereupon the other tooke away some of the Fishermans fishes against his will, and gaue him more money for them then they were woorth, but the fisherman was thereby put in feare, whereupon the other was indited and arraigned at Yorke about 26. *Eliz.* but iudgement was respited; for that the Court doubted whether it were felony or no. Cromp.35.

Also in the former description of Robbery, the words, from the person are not so nicely to be construed, that (to make vp robbery) the goods must bee needes annexed to the body of the person; For in some cases it may be Robbery, notwithstanding the Thiefe doeth neither take the goods from the person of the owner, nor yet assault him.

As if in my presence, a felon taketh away my goods openly against my will; this is Robbery, though he neither taketh them from my person, nor assaulteth mee, for the losse is the same, and the feare alike as though it had bene from my person. Stanf.27. Lambt.265.

And if one or more doe take a horse out of my pasture, or driue my cattell out of my ground, I standing by and looking on at the same time; this is Robbery, if so be that the felon doeth either make an assault vpon mee, or doe put me in feare. P.R.

But to make it Robberie, the person must be put in feare; For if a Felon doe take money from mee in the high way, and shall not put me in feare; this is no Robbery. *Lambert.* 266. *Crompt.* 35. *P.R.* 131.

And you shall finde a Case in my Lord *Dyer*, how a Felon did take money to the value of fortie shillings or aboue, from the person of another in the high way, And for that hee did not put his person in feare, by assault and violence; this was holden no Robbery, and the offender was allowed his Clergie for the same Felonie. Dyer.224.

Also if the Robbery bee not committed in or neere the high way, it seemeth the offender may haue his Clergie. See *1.Ed.6.ca.* 12. *Rastal.60.b.& 61.d.* 23.H.8.1. P.Clergie.13.

Note also, if two theeues shal attempt to rob me, and I flie from them, and one of the theeues follow me, and the other espying an other true man (but out of the sight of his fellow) rid towards him, and robbed him; this was adiudged Robbery in both the theeues, and yet the one was neither in sight, or knowing of this Robbery, Cromp.34.

Robberie; but becauſe they both came to robbe, and at the ſame time, this fact committed by the one, ſhal be imputed to the other alſo: it was one *Pudſeys* caſe. 28. *Eliz.*

Cutt purſe.

P. Clergie 1. Lambt. 266. Cromp. 34, 35. If one ſhall cut my purſe, or take, or picke my purſe out of my pocket ſecretly, or priuily and fraudulently, it is felonie of death without benefit of Clergie, if it be aboue the value of xij.d. *Quære*, if it be vnder xij.d. becauſe it is from the perſon of a man, and the forme of the Indictments are *Inſultum fecit*. See *Fitz. Coron.* 430. But yet this ſeemeth no felonie of death. *Lambt.*

P. Clergie. 1. Lambt. 266. So if one ſhall take my mony or other goods from my perſon, ſecretly without my knowledge or by ſleight onely, I neyther being made afraid, nor witting of it (if it be aboue xij. d. in value) it is felony of death.

26. Eliz. Cromp. 35. A man cutteth my girdle priuily, my purſe hanging therat, and the purſe & girdle falleth to the ground, but he did not take them vp (for that he was eſpied,) this is no felonie, for that the Theefe neuer had an actuall poſſeſſion thereof, ſeuered from my perſon; But if he had holden the purſe in his hand, and then cut the girdle (although it had fallen to the ground, and that hee tooke it vp no more) then had it beene felonie (if there had beene aboue xij.d in the purſe) for he had it once in his poſſeſſion: but theſe ſecret and priuie takings from my perſon, are no robberie, for hee neyther aſſaulted me, nor put me in any feare.

Larcenie.

LArceny (being fetched from the Latine word *Latrocinium*) is properly a fraudulent and felonious taking away of another mans perſonall goods, in the abſence of the owner, and without his knowledge.

This is of two ſorts, *Grand* Larcenie, and *Pety* Larcenie.

Grand Larcenie.

Grand Larceny, is when the goods ſtollen be aboue the value of xij.d. and this is felonie of death, *ſc.* wherin iudgement of death ſhalbe giuen vpon the offendor (except he be ſaued by his book.)

1. Coron 451. And yet if the goods ſtollen be to the value of x. s. if the Iurie that paſſeth vpon his arraignement, ſhall find that the goods did not exceed the value of xij. d. then that offence ſhall be taken but for petie Larcenie.

Petie Larcenie.

Petie Larcenie, is when the goods ſtollen, doe not exceed the value of xij.d. & for this the offendor ſhalbe impriſoned for ſome certaine time, and after ſhall be whipped, or otherwiſe puniſhed by the diſcretion of the Iuſtices before whom he is arraigned; but it is not felony of death.

Yet may not the Iuſtice of P. before whom ſuch an offendor

ſhall be brought (out of the Seſſions) puniſh by his diſcretion the ſaid offendor for petie Larcenie, and ſo to let him goe, but muſt commit him to priſon, or bayle him, to the intent he may come to his triall, as in caſe of other felonies; & if vpon his triall the Iurie ſhall finde the goods ſtollen to exceed xij.d. in value, the offendor ſhall haue iudgement to die for the fault.

Alſo, although petie Larcenie be not puniſhable by death, yet it is a felonious taking; for the Indictment of petie Larceny muſt be *Felonice cepit*: and he ſhall forfeit all his goods and chattels for ſuch a felonie; and there is no difference eyther in the nature of the offence, or in the minde of the offendor, but onely in the value of the thing ſtollen, which alſo maketh the difference of puniſhment. 27.H.8.22. f.Coron 218. Br.Coron 219.

If one ſhall ſteale goods to the value of iiij. d. at one time, and vj.d. at another time, and of iij.d. at another time, which together doe exceed the value of xij.d. and that theſe ſeuerall goods be all ſtollen from one and the ſame perſon; then may they be put together in one Indictment, & the offendor being therupon arraigned and found guiltie, ſhall haue iudgement of death therefore. f.Coron.415. Stamf.24. Crom.36.a.

Againe if two, or moe, together doe ſteale goods aboue the value of xij. d. this is felonie of death in them all; for the felony in them is ſeuerall, though the ſtealing be iointly done. f.Coron.404. Stamf.34.l.

Now firſt for the manner:

The manner. IN Larcenie, two things muſt concurre, *ſc.* to take, and to carrie away, or remoue, the thing taken with a purpoſe to ſteale the ſame; for the Indictment muſt be, *Cepit et aſportauit*, or *cepit et abduxit*; and yet in theſe words, the letter is not ſo much to be inſiſted vpon, as the meaning, and that for the better ſuppreſſing of offendors in this kind.

Deliuerie. For although by the Law in Maſter *Glanuils* time *a furto omnimodo excuſatur qui initium habuerit ſuæ detentionis per dominum illius rei*; yet at this day it may be felonie, though the offendor take not the thing, but comes firſt vnto it by deliuerie from the owners owne hand, and ſo commeth lawfully to the poſſeſſion; As

If a Tauerner, doe ſet a peece of plate before his gueſt to drinke in, and the gueſt carrieth it away, this is felony; for the Tauerner gaue him no poſſeſſion thereof, but onely the vſe to drinke in for the time. 13.E.4.9. Stamf 25.

If I deliuer goods to a Carrier (or other perſon) and bargaine with him to carrie them to a certaine place appointed; if he carieth them to the place, and then conueieth them away fraudulently, this is felonie, for the priuitie of baylement was determined when they came at the place appointed. *Ibid.*

If

So if the Carrier ſhall take out parcell of the goods, this is felonie. *Ibid.*

Alſo if the Carrier ſhall carrie them to another place, and there breaketh them vp, and conuerteth part, or all, to his owne vſe, this is felony. *Ibidem.*

But if the Carrier ſhall ſell or giue away or otherwiſe embeſill the whole as he receiued them, this is holden to be no felonie, becauſe it was deliuered him. *Stamf.* 25.a. *Cromp.* 36.a.

And yet in this laſt Caſe there is beſides the deliuerie, a bargain and agreement to carrie the goods, and the deliuerie was onely to that intent, ſo that the propertie of thoſe goods did alwaies remaine in the firſt owner. *Ideo quære.*

But if *A.* lendeth his horſe to *B.* being a ſtranger, who rideth quite away with the horſe; this is no felonie in *B.* by reaſon of the deliuerie. And ſo did Sir *Iohn Dodderidge* Knight giue direction at Cambridge Aſſiſes. 1617. vpon an Indictment of felony preferred in ſuch a caſe; *quære* if the horſe had bin deliuered to a ſeruant, who rideth away therewith. *Vide poſtea ſub hoc tit.*

7.Iac.cap.7. If a Clothier ſhall deliuer any wooll or yarne to his Carder, Spinſter, or Weauer, &c. to dreſſe, and they ſhall conuey away, imbeſill, or ſell any part thereof, this ſeemeth to be no felony, by reaſon of the deliuerie, but they ſhal be puniſhed at the diſcretion of two Iuſtices of Peace, by whipping or ſtocking, &c. *Vide antea tit. Cloth.*

13.E.4.9. So if I deliuer my goods to another to keepe, and he fraudulently conſumeth them, or otherwiſe conuerteth them to his own profit, this is no felony, becauſe of the deliuerie.

And ſo (it ſeemeth) if I deliuer money or goods to *A.* to deliuer to *B.* and *A.* flyeth away with them, conſumeth them, or conuerteth them to his owne vſe, this is no felonie, by reaſon of the deliuerie.

21.H.4.14. 13.E.4.10. 3.H.7.12. 21.H.7.15. If a man deliuers money to his ſeruant to keepe, or plate to his Butler, or veſſell to his Cooke, or horſe to his Horſe-keeper, or ſheepe to his Sheepeheard, and ſuch ſeruant doth goe away with them, this is felony by the Cõmon Law in that ſeruant, (for theſe goods were alwaies in the Maſters poſſeſſion, and kept and vſed by the ſeruant to the Maſters behoofe.) But yet there was much difference of opinions herein; for the cleering whereof (in ſome part) the ſtat. 21.*H.*8.*cap.*7. (which was made perpetuall by the ſtat. 5 *Eliz.cap.*10.) prouided, that all and ſingular ſeruants of the age of eighteene yeares (other then an apprentice, which muſt be vnderſtood of ſuch as are bound by Indenture, and by the name of an apprentice) to whom any money, goods, or chattels, &c. by his or their Maſter or Miſtreſſe ſhall be deliuered to keepe, of the *Seruants.*

21.H.8.7. P.Felon 10.

Cromp.50.

value of xl.s. or aboue, if ſuch ſeruant ſhall goe away with, or conuert to his owne vſe, any ſuch money, goods, or chattels of the ſaid value, to the intent to ſteale the ſame, or to defraud his Maſter or Miſtris thereof, it ſhall be felonie; but this muſt be proſecuted within one yeare after the offence.

And now vpon the conſtruction of this Stat. of 21. *H.* 8. diuers new queſtions and caſes haue ſince aroſe; As

If a man deliuer an Obligation to his ſeruant, to go and receiue the money thereupon due, and the ſeruant receiueth the money, and then goeth away therwith, or doth conuert it to his own vſe, this is holden to be no felony within the meaning of this ſtatute, for the Maſter did not deliuer the money to his ſeruant. Dyer. 5.

So if a man deliuers to his ſeruant, wares or cattel to ſell at Faire or Market, and he ſelleth them there, and receiueth the mony, and then goeth away with the money, or conuerteth it to his own vſe, this is no felonie within this Stat. for he had not the mony by his Maſters deliuerie; neither went he away with the goods his Maſt. deliuered him. Ibidem. Dyer. 5.

But if the ſeruant receiued of his Maſter xx.li. in gold to keepe, which he changed into ſiluer, and then ranne away with that; this is felonie, for that gold and ſiluer are both of the ſame nature, *ſc.* money. 28. Eliz. Cromp. 35.

And if a man deliuers to his ſeruant a Horſe to ride to Market, or money to carrie to a Fayre, or to buy cattell or other things, or to pay to another man, and the ſeruant goeth away therwith, this was no felonie by the Common Law, by reaſon of the deliuerie thereof to him by his Maſter; but *quære* if it bee not Felonie by this Statute, for that he went away with the thing deliuered him. 21. H. 7. 15.

And if one of my ſeruants doth deliuer to another of my ſeruants goods of mine (to the value of xl.s.) and he doth goe away therewith, or conuerteth them to his own vſe, this is felonie, within this ſtatute: for this ſhall be ſaid my deliuerie. Dyer. 5.

If a man deliuers to his ſeruant a peece of cloth to keepe, & the ſeruant maketh himſelfe a garment thereof, and after goeth away therewith, this is felonie (within this Stat.) for that the propertie is not altered, by the making a garment thereof, becauſe the cloth may be knowne ſtill. Otherwiſe is it of Barley turned into Mault, or of money melted and turned into a wedge or peece of mettal, or the like, for that in theſe caſes the Barley, or money cannot be knowen againe, but are altered in their nature & kind: but *quære*, and ſee the words of the Statute. 5. H. 7. 16. Br. proprietat. Cromp. 50.

If my receiuer of my rents, receiueth x.li. of my tenants, & run away therewith, it is no felony; for the ſtatute is where the Maſter deliuereth to keepe, &c. Cromp. 50.

If

13.E.4.9. If a man deliuers to his ſeruant, the key of his chamber doore, and the ſeruant taketh away his Maſters goods in the chamber (aboue the value of xij.d.) this is felonie at the Common Law, for the goods were not deliuered.

P. ℈ Felon 11. ℈ Exec' 5. Another felony there is by the Stat. 33. *H.6. cap.* 1. in the ſeruant that ſhal take away or ſpoile the goods of their deceaſed Maſter; but this felony groweth vpon their default of apparance in the K. Bench, after Proclamation, and therefore neither the tryall nor hearing thereof belongeth to the Iuſtices of P. becauſe they cannot well take knowledge of ſuch default in the K. Bench.

The ſecond thing which muſt concurre (in Larcenie) to make it felonie, is the carrying away of the thing ſo taken; and yet it is not of neceſſitie that it be cleane carried out of the houſe, or place where it was, but it ſufficeth that it bee ſo farre remoued, that the euill and felonious intent of the taker may plainely appeare; As

27. Aſſ. 39. See Stam. 26.b If a gueſt will felonioufly take the ſheetes, or other goods of the Inne-keepers, out of the chamber where he lodgeth, and then (going to the Stable for his horſe) is taken with them, or they be found in ſome other roome of the houſe where he had laid them; it is felonie in both caſes, although the poſſeſſion of thoſe goods continued in the owner.

Cromp. 36.a. Lambt. 277. So is it if one taketh a horſe in another mans Cloſe, with an intent to ſteale him, and he be apprehended before hee hath gotten the horſe out of the ſame cloſe; this is felony.

Next, of what things Larcenie may be committed, and of what not.

Moueable goods. LArcenie may be committed by taking of any the moueable goods of any perſon; as money, plate, apparrell, houſhold ſtuffe; or corne, hay, trees, or fruit (that are ſeuered from the ground) or the like; the ſtealing of them is felonie.

Domeſticall. It is alſo felonie to ſteale any Horſes, Mares, Colts, Oxen, Kine, Sheepe, Lambes, Swine, Pigges, Hens, or Geeſe, Duckes, Turkies, and other domeſticall beaſts or birds, of tame nature.

Wilde. It is felonie alſo to take ſome things that be of a wilde nature; as to take young Pigeons which cannot flye, out of another mans Stamf. 25.c. Doue-houſe; ſo to take young Hawkes, or young Herons, out of their neſts (or ayries) and breeding in a Parke, or other ſeuerall ground; ſo to take fiſhes that be kept in a Truncke, or ſeuerall pond. *Quære* of old Doues taken in the doue-coat, or of any other wild beaſt or fowle (being of value) & taken within a mans houſe.

Alſo it it felonie to take away Swans that be lawfully marked, though they be at large.

So is it to take a tame Deere, which is marked and Domeſticall (eſpecially if the taker knowes it to be tame; or that it weareth a Bell.) 10.E.4.15. Stamf.25.c.

But by the Common Law Larcenie cannot be committed by taking of ſauage or wilde beaſts, fowles, or fiſh, found in their wildeneſſe and abroad or at large; as Deere, Conies, Hawkes, Doues, Pheſants, Partridges, Herons, Swans, or fiſh that are at libertie, &c. for no perſon can claime propertie in them.

Howbeit by Stat. it is made Felony to hunt Deere, or Conies (after ſome ſort) in a Foreſt, Parke, or Warren; or to take a tame beaſt, or other thing, in a Parke, by manner of robberie. See 3. *Ed.*1.20. and 1.*H.*7.*cap.*7. *Vide poſtea Felonie by Statute.* P.Felon 24.

Alſo by Statute it is felonie to ſteale, take away, or conceale a Hawke. *Ibidem.* P.Felon 20.

But for the better vnderſtanding what the Law is in things that be *feræ Natura*, obſerue theſe differences. Co.7.17.b.

Propertie. In ſome things that be *feræ Natura*, a man hath a right of propertie, and in ſome of them a right of priuiledge:

There be three maner of rights of propertie, *ſc.*

1 Abſolute. This propertie a man cannot haue in any thing which is *feræ Natura*, but onely in ſuch things as are *domitæ Naturæ.*

2 Qualified. } Theſe properties a man may haue in things *feræ Natura*; & to ſuch properties a man may attaine by two meanes, *ſc.*
3 Poſſeſſorie. }

1 By induſtrie: and this may be eyther by taking them onely; or by making them tame (*ſc. Manſueta id eſt manui aſſueta*, or *domeſtica id eſt domui aſſueta:*) But in theſe laſt a man hath but a qualified propertie, *ſc.* ſo long as they remaine tame, and ſo long felonie may be committed by taking of them away: but if they attaine to their naturall libertie, and haue not *animum reuertendi*, then the propertie of them is loſt.

2 *Ratione impotentiæ et loci*; As where a man hath young Goſhawkes or Herons, or the like, which are *feræ Natura*, and do breed (or ayre) in my ground, I haue a Poſſeſſorie propertie in them; for if one takes them when they cannot flie, the owner of the ſoile may haue an action of treſpaſſe, *Quare boſcum ſuum fregit, et tres pullos eſperuorum ſuorum*, or *ardearum ſuarum, precij tantum, nuper in eodem boſco nidificantem, cepit et aſportauit:* and to take theſe away is felonie, as is aforeſaid.

But when a man hath beaſts or fowles (that be ſauage and in their wildeneſſe) *Ratione Priuilegij*, *ſc.* by reaſon of a Parke or Warren, &c. (as Deere, Hares, Conies, Pheſants, or Partridges,

or

or the like which be things of Warren) hee hath no propertie in them: And therefore in an action *Quare parcum*, or *Warrenam, &c. fregit et intrauit, et 3. damas, lepores, cuniculos, Phasiones, perdices, &c. cepit et asportauit*, he shall not say *suos*, for that he hath no propertie in them, but they belong vnto him *Ratione Priuilegij* (for his game and pleasure) so long as they remaine in the place priuiledged. And if the owner of the Parke die, his heyre shall haue them, and not his executor or administrators; for that without them the Parke (which is an inheritance) is not complete, neither can felony be committed by taking of them.

Lambt. 270. Neyther can Larcenie be committed by taking of Dogges of any kind, Apes, Parats, Squirrils, singing birds, or such like thing (kept onely for pleasure, and not of any profit, though they be in the house and made tame;)

Co. 7, 18. 12. H. 8. 3. Br. Trespasse 407. No not by taking a Bloodhound or Mastiffe, although that there is good vse of them, and that a man may be said to haue a propertie in them, so as an action of trespasse lyeth for taking them; yet in regard they are things of so base a nature, no felony can be committed by taking them.

Stamf. 25. 6. Also it is felonie to steale the flesh of any tame or wild fowle, or beast, that is dead, out of the possession of another man.

Cromp. 36. So is it to pull the wooll from the Sheepes backe; or to kill them, and to take the skin, and leaue the bodie behind.

But note, that in all these cases of felony aforesaid, the thing so stollen must exceed the value of xij. d.

Things reall. Also the taking of any reall chattell or thing, is no felony; as

Stamf. 25. c. If one cuts downe my tree, or my corne, and carrieth it away, or pulleth and stealeth my apples hanging on the tree, and carieth them away; these are no felony, for these things be part of my freehold, till they be seuered;

Stamf. 25. But if I gather mine apples, or cut downe a tree, or corne of mine owne; then it is felonie if another shall carrie them away feloniously.

Lambt. 272. Cromp. 36. And by the opinion of *Mar.* if a stranger cuts downe my tree, or corne without title, and another time after fetcheth it away, that will proue felonie, because it was a chattell seuered when hee tooke it.

Cromp. 37. Also to take Lead from off a house, or Church, wil not amount to felonie; for it is parcell of the house or freehold.

Stamf. 25. Lambt. 271. Also to take away the Euidences of a mans land, or an Indenture of Lease, or other writings, (be they in, or without a boxe) it is no felony because they cannot be valued, and againe because they concerne inheritance, chattels, realls, or things in action.

So

So to take an Enfant in Ward, is no felony. Stamf.25.

The owner vnknowne.

Alſo the taking and carrying away of ſuch things whereof the owner is vnknowne, in ſome caſes is no felonie; As the taking away of treaſure that was hidden, wrecke of the Sea, or goods that be wayued, or ſtrayes (before they be lawfully ſeiſed, &c.) Stamf.25. F.Coron 187, 265.

And yet where the goods be, *bona cuiuſdam hominis ignoti*, or *bona cuiuſdam mortui et ignoti*, or *bona parochianorum*, or the goods of a Church, or Chappell, or the goods of any Corporation in the time of vacation, in theſe caſes there bee owners of them to ſome purpoſe, and therefore it is felonie to ſteale ſuch goods. Dyer.99. Lamb.371, & 476, 478.

One *Nottingham* digged a dead bodie out of his graue, and tooke away his winding ſheete; this was holden to be no felony, but puniſhable as a miſdemeanor, and the offendor was adiudged to be whipped, &c. for it: this was at Cambridge Sommer Aſſiſes, *Anno* 1617.

His owne goods.

Note alſo, that a man may commit felonie, by taking his owne goods; as

If *A.* do lend, or deliuer goods to *B.* to keepe, and after *A.* doth take them away felonioufly or fraudulently (to the intent to recouer dammages for the ſame againſt *B.* by an action of *Detinue*) this is felonie in *A.* 7.H.6.43. 5.H.7.18. Stamf.26.a.

So it is, if I lend my plate, or deliuer my goods to another to keepe, and he melteth my plate, or changeth the faſhion of my goods: now if I ſhould take that mettall, or thoſe goods felonioufly, it were felonie in me, becauſe the propertie is altered, by altering of the faſhion. See a little before. Mar.lect.12. Cromp.37.

If the partie robbed taketh his goods againe from the Theefe, and ſuffereth him to eſcape. *Vide poſtea tit. Acceſſories.*

A man findeth my purſe in the High-way, and being asked thereof denieth it, this ſeemeth to be no felonie, for hee came not thereby at the firſt felonioufly. Cromp.37. PR.129.

A man commeth to my wife, or to my ſeruant, with a falſe meſſage, token, or letter, made in my name, and thereby getteth my goods; yet this is no felonie, but it ſhall be puniſhed by the Statute of 33.*H.*8.*cap.*1. Cromp.37. P.Iuſt.54.

What perſons are chargeable in Larcenie.

Wife.

A *Feme* couert doth ſteale goods by the compulſion of her husband, this is no felonie in her. *F.Coron.* 160. 27.Aſſ.40. Stamf.26.

But if by the compulſion of her husband, ſhe committeth murder, this is felonie in them both. Mar.lect.18.

If a *feme* couert doth ſteale goods by the commaundement of her

her husband (without other constraint) this hath beene holden to
27.Ass.40. See Stamf. 142.c.& 26,27 be felonie in her. Master *Bracton* also saith it is felonie; for *licet uxor obedire debeat viro, in atrocioribus tamen non est ei obediendum*; but Master *Stamf.* and others seeme to be of another opinion. *Stamf.26.PR.130.*

f.Coron.160. Lamb.277. If the husband and the wife together doe steale goods, this shal be taken to be the onely act of the husband, and not to be felonie in the wife. *Stamf.26.vide.*

Stamf.26. But a woman couert, alone by her selfe (the husband not knowing thereof) may commit Larcenie, and may be either principall or accessarie; as if she steale another mans goods, or receiue the theefe that stealeth them, or shall receiue stolne goods into her house knowing them so to be, or shall locke them vp in her Chest or chamber, her husband not knowing thereof: and in such case if her husband so soone as he knoweth thereof, do forthwith for-
f.Coron.383. See Stamf.26. sake his house and her companie, and make his aboade elsewhere, hee shall not bee charged for her offence; whereas otherwise the law will impute the fault to him, and not to her. *PR.130.*

Goods are deliuered to the husband to keepe, and his wife stealeth them, it is no felonie; otherwise is it if the husband had deliuered them to a stranger, and then the wife had taken them feloniously out of the possession of the stranger, this had been felony in the wife. *Mar.Lect.12.*

Also the wife shal not be accompted a felon, for taking or ste-
f.Coron.455. Br.Coron.142 Stamf.27. aling the goods of her husband; And if the wife doe take her husbands goods secretly, and deliuers them to a stranger knowing thereof, yet this is no felony in the stranger:

But if a man doe take away another mans wife, with her hus-
Br.Coron77. bands goods, against the wiues will, this is felonie by the Statute
Cromp.35. PR.130. Westminster 2.*cap.*34. as it seemeth, and so if a man takes away another mans wife, with her husbands goods, against the husbands will, this also is felonie.

And if the husband commits Larceny (or other felony) & the wife knowing thereof, doe receiue or relieue him, &c. shee is not thereby Accessarie to the felonie. *Vide postea tit. Accessorie.*

If a seruant by the compulsion of his Master, stealeth another *Seruant.* mans goods, this is felonie in them both.

See more of seruants here before *sub hoc tit.*

Lambt.278. An Ideot, Lunatike, dumbe and deafe person, and an Enfant, *Ideot. Enfant.* are chargeable in Larceny, after the same sort, as they are chargeable in Homicide; which see here before in manslaughter. And yet if an Enfant shall commit Larcenie, and shall be found guiltie thereof

thereof before the Iuſtices of P. it ſhall not be amiſſe for them to reſpite the iudgement, & ſo hath it often bin done by the Iudges; ſee *Stamf.*27.*et* 3.*H.*7.*fol.*1.b.*et* 12.b.

Other Felonies by the Common Law.

Burning houſes.

BVrning of a Barne (which is adioyning, or neere to a dwelling houſe) in the night felonioufly, is felonie by the common Law. 11.H.7.1. Co.4.20.

So is it to burne a Barne (in the day time) hauing corne in it, and though it adioyne not to the dwelling houſe. Lamb.262.

Burning of any dwelling houſe, or other houſe parcell thereof, willingly and felonioufly done, is felonie by the Common Law, whether it be done by night, or by day. 3.H.7.10.2. Co.11.29. Stamf.36.

Burning of any other houſe, or of a Stacke of corne, felonioufly, ſeemeth alſo to be felonie by the Common Law, for the words of the Statute Weſtminſter 1. *cap.*15. (which Stat. ſeemeth to be but a rehearſall of the Common Law, *Br. Mainpr.*78.) ordeyneth that ſuch as be taken for burning (generally) felonioufly done, be not bayled: and of that opinion ſeemeth M^r *Britton*, who wrote preſently after the making of the ſame Statute. *Britton fol.*16. Stamf.36.

If an Indictor (or Iuror) in caſe of Treaſon, or Felonie, ſhall diſcouer the Kings Counſell, and his fellowes, it hath beene adiudged felonie. *Vide antea tit. Petit treaſon and felonie.*

Reſcous.

Reſcuing or taking away from an Officer, any offendor, who is attainted, impriſoned, or but arreſted, for felonie; ſuch *Reſcous* is felonie, as well in him that made the *Reſcous*, as in him that is reſcued. See more here *pag. ſequent.* 1.H.7.6. Br.Coron.127 130. Stamf.31.b.

Eſcape.

Alſo when a man hath arreſted another for felonie, and after letteth him goe at libertie; this is a wilfull Eſcape, and ſhall be adiudged felonie in him that did ſo let him eſcape. And in caſe of Treaſon, ſuch eſcape is Treaſon. See *paulo poſtea.* 9.H.4.1.

Breaking of priſon.

Breaking of Priſon (before the Statute *de frangentibus priſonam*, made 1.*Ed.*2.) was felonie by the Common Law, for what cauſe ſoeuer he were in priſon, yea though hee had beene impriſoned but for a Treſpaſſe; But now that Statute hath changed the Common Law therein: ſo that now if a man be arreſted or taken for a Treſpaſſe, and doe make an eſcape, or be reſcued by a ſtranger, this is but fineable at this day. Stamf.30,31. See the Stat. 1.E.2.& P.Priſon 5.

Felonies

Felonies by Statute.

3.H.7.cap.14. P.Felon 13. If any man being the Kings ſworne ſeruant,&c. ſhall confederate, imagine, compaſſe, or conſpire with another, to deſtroy the King,or any Lord of this Realme, or any other ſworn to the Kings Councell,or the Steward, Treaſurer, or Controller of the Kings houſe, it is felony.

1.Ed.2. P.Felon.15. Breaking of priſon,by one being therein for felony ; or by one being a priſoner for felony,is felonie. *Breaking priſon.*

Now euerie one who is vnder arreſt for felonie is a priſoner, and that as well without the priſon,as within ; or in the Stocks in the high ſtreet ; or in the poſſeſſion of any that hath arreſted him, or that hath the keeping of him, being arreſted for felony.

1.E.3.17. PR.147. And therefore if any perſon who is vnder arreſt for felonie,or ſuſpition thereof (whether he be in the Gaole,or out, or but in the Stocks,or but in the poſſeſſion of any that hath arreſted him, if he ſhall make an eſcape, this is a breaking of priſon in ſuch priſoner, and is felonie.

1.E.3.1. Note, that there is no difference whoſe priſon the offendor doth breake,whether it be the Kings priſon,the Lords of a Franchiſe,or any other perſons.

1.H.7.6. 1.E.3.17. Dyer.99. And if a ſtranger doth breake the priſon, or open the Stocks, or make a *Reſcous*, whereby one impriſoned, or arreſted for felony, eſcapeth ; this is felonie both in the priſoner, and in the ſtranger, although the Priſoner was neuer indicted of the felonie. *Reſcous.*

9.H.4.1. f.Coron.333. Stamf.33.a. By ſome opinions, if a ſtranger ſhall diſturbe the arreſting of a felon,it is no felony except the felon were taken and arreſted,and after reſcued : yet *Fitzh. Iuſt. P. fol.* 114. ſaith, that ſuch diſturbance before arreſt is felony.

1.H.7.6. If a priſoner be reſcued at the Gallowes, or as he is in going to execution,this is a breaking of priſon, and felony within this Statute.

PR.147,149. Stamf.31. If a Gaoler, a Conſtable, or any other, which hath a priſoner vnder arreſt for felonie, voluntarily letteth or ſuffereth him to goe at libertie ; this is felonie in the Gaoler or him that letteth ſuch priſoner eſcape, but it is no felonie in the priſoner ; but if ſuch a priſoner ſhall eſcape by the negligence of his Keeper,then the felonie reſteth in the priſoner onely, and not in the Gaoler,&c. *Eſcape.*

PR.149,150. The voluntarie letting of a Felon to eſcape, which is not arreſted for felony ; though he knoweth of the felonie, yet it is not felony;

felonie: neyther can it be an Eſcape, without an Arreſt; and yet ſuch an offendor (being an Officer) may, for ſuch his negligence or default, be indicted and fined, as it ſeemeth by the words of the Commiſſion.

Note, that a man is alwaies ſaid to be in priſon, ſo long as hee is within the ſight of the Gaoler, or of him that hath him in cuſtodie, though he doth breake away, or eſcape. Dyer. 44. a.

And if a priſoner ſhall make an eſcape, (of his owne wrong, and without the conſent of the Gaoler, or other perſon that hath him in cuſtodie) though he eſcape out of their ſight and into another countie, yet if he be taken againe vpon freſh ſuit, before the Gaoler &c. (be ſued, or) hath fined for the eſcape (though it be ſeuen yeares after) yet this is no eſcape, as it ſeemeth, for which the Officer ſhall be charged; for there is no preiudice to the King by the eſcape, though it be felony in the priſoner, as aforeſaid, and a breaking of priſon in him. *Co.* 3. 44. *et* 52. accordeth in caſe of a priſoner taken in execution, that ſhal make an eſcape of his owne wrong. Stamf. 33. b. c.

If a Gaoler or other officer &c. ſhall licence his priſoner to goe abroad for a time, and to come againe, this is an eſcape, becauſe the priſoner is found out of the bounds of his priſon, though the priſoner returne againe according as he ſhall be preſcribed: and ſo is it, if the officer ſhall ſuffer his priſoner to goe abroad for a time, by baile or baſton, this is an eſcape; yet they are holden in both caſes to be but negligent eſcapes in the officer, & ſo but fineable. But *quære*; for the Gaoler, and other officers ought to keep their priſoners in *Salua & arcta cuſtodia. Vide poſt. tit. Impriſonment.* Co. 3. 44. Stamf. 33. c. f. Coron. 241. & 431.

Note, that the high Sheriffe himſelfe ſhall be anſwerable for an eſcape ſuffered by his Gaoler, and may be indicted for the ſame, as it ſeemeth (ſee the Preſidents in *Lambt*, *Weſt*, & *Crompton*) and then the high Sheriffe hath a warme office; yet ſee *Co.* 9. 98. that the Goalers who haue the actuall poſſeſſion ſhall be anſwerable for eſcapes, if they haue wherwith: and *Popham* chiefe Iuſtice did cauſe one *Stauer* (a Gaoler at Cambridge) to be indicted, arraigned and hanged for an eſcape ſuffered by him. Lbr. Crompton. Weſt. Co. 9. 98.

Eſcape is of two ſorts.

Now an eſcape is of two ſorts, voluntarie, and negligent.

Voluntarie eſcape is where one doth arreſt, or hath impriſoned another, for felonie (or other offence) and after letteth him goe at libertie whither he will: Stamf. 32.

Negligent eſcape is when the partie arreſted or impriſoned, doth eſcape againſt the will of him that arreſted or impriſoned him, and is not freſhly purſued and taken againe before he hath loſt the ſight of him; the penaltie thereof ſeemeth to be onely a fine Stamf. 33.

fine at the diſcretion of the Iudges or Iuſtices. Yet ſee *Stamf.* 35. a difference where the priſoner is attainted, where but indited, and where onely taken vpon ſuſpition.

Stanf.32. But for voluntary eſcape, if the arreſt or impriſonment were for felony, it ſhalbe adiudged felony in him, which did voluntarily ſuffer the priſoner to eſcape; And if the arreſt &c. were for Treaſon, it ſhall be adiudged Treaſon; And if the arreſt or impriſonment were for Treſpaſſe, it ſhall bee adiudged Treſpaſſe: And yet ſee *Fitzh. Coron.* 248. Eſcape *non adiudicabitur pro tranſgreſſione*.

F.Coron. 248.

One *Nichols* aſſaulted *Cholmeley* to robbe him, and killed him, after Queene *Elizabeth* graunted *Nichols* his pardon: But *Cholmely* his wife hauing commenced her appeale againſt *Nichols*, he was ſtill deteined in priſon at the womans ſuite. After the Gaoler ſuffered *Nichols* voluntarily to goe at large, and ſo to eſcape: by the opinion of Maſt. *Plowden*, this was felony in the Gaoler, although *N.* the priſoner were now no felon as to the Queene, in regard he had obtained his pardon. *Plow.* 476. *b.*

F.Coron. 430. et 431. P.R.150. A priſoner found guiltie of pettie Larceny, is adiudged to be impriſoned by the ſpace of a moneth (for his puniſhment) and after the moneth hee breaketh priſon, and eſcapeth: *quære* what this is in the priſoner, and what in the Gaoler. It is holden that the Gaoler ſhalbe charged with this eſcape; But if a priſoner bee diſcharged (by iudgement) paying his fees, if he eſcape here, the Gaoler is not chargeable; the difference is, The priſoner in the firſt caſe was by iudgement committed to priſon; and in the laſt caſe hee is adiudged to bee acquit of his impriſonment, paying, &c.

17.H.4.12. Plow.258.262. et 401. Note, that a voluntary eſcape is no felony, if the acte done were not felony at the time of the eſcape made; As if *A.* doe ſtrike *B.* and hurt him mortally, whereupon the Conſtables doe arreſt *A.* and after willingly ſuffer him to eſcape, and after *B.* dieth of that ſtroke, this eſcape is no felony, either in the Conſtable, or in the priſoner; yet the conſtables ſhall make a great fine, yea ſhall be fined to the value of their goods (as it ſeemeth) by 11.*H.*4.12. and *Stamf.* 35.*b.* becauſe this eſcape was voluntary.

Cromp.39. The voluntary ſuffring him to eſcape, who hath killed another *ſe defendendo*, or by miſaduenture, or of him that hath committed pettie Larceny, ſeemeth not to be felony, for that theſe offences are no felony of death; but he that ſuffreth ſuch an eſcape, ſhal bee fined onely, *Cromp.* 39. Yet *quære*, for they that ſuffered this eſcape, are not to iudge whether theſe offences bee felony or no: See hereof *poſtea tit. Euidence againſt Felons.*

Note alſo, where one is a priſoner by arreſt onely; and he doth eſcape, there the eſcape ſhalbe preſented before the Iuſt. of peace, or other Iuſtices hauing authority to enquire of the eſcape, before he that ſuffered the eſcape ſhall anſwere it. 1.Ed.3 ca.1. P.Eſcape.2. Stamf.35.c.

Note alſo, if a man bee arreſted for Felony, by the Conſtable, or other perſon, And after they ſhall haue intelligence that there is no ſuch Felonie committed: heere they may ſet the partie arreſted at libertie againe, and they ſhall not bee charged with the eſcape; for there can bee no felon, where there is no felony committed. 13.H.7.7. Cromp.40. P.R.151.152.

But if a man be ſlaine, or that there be any other felony committed, and one is arreſted for the ſame felony, or for ſuſpition thereof; though hee that made the arreſt, ſhall after haue intelligence, and certaine knowledge that the partie arreſted is not guiltie of that offence, yet hee or any other may not ſet the partie ſo arreſted at liberty; for now he muſt not be deliuered by any mans diſcretion, but by courſe of law, otherwiſe it will proue a voluntary eſcape, and ſo felony. 44 Aſſ.12. Cromp.40.

If a Iuſtice of peace ſhall ſend for a felon out of the gaole, and ſhall deliuer him without Baile; this ſeemeth to be a voluntary eſcape, and ſo felony in the Iuſtice, Otherwiſe where the Iuſtice erreth *pro defectu ſcientiæ*, as to baile one that is not baileable; this is but a negligent eſcape. 25.Ed.3.39.

Now to proceed with Felonies by Statute.

BVggery, committed with mankind, or beaſt, is Felony (without benefit of Clergie) 25.*H.*8.6.5.*Eliz.*17. it being a ſinne againſt God, Nature, and the Law. P.fol.9. Exod.22.19. Leuit.18.23.

Burning of houſes and ſtackes of corne: ſee before. 238.

Congregations, and Confederacies, holden by Maſons, it is felony in the cauſers thereof, and finable in the Maſons, 3.*H.*6.*cap.*1. P.fol.22.

Cutting out of any the Kings ſubiects tongue; or putting out their eyes, of malice pretended, is felony. 5.*H.*4.5. P.fol.19.

Cutting or breaking downe of Powdike, or other bankes in Marſhland, maliciouſly, is felony. 22.H.8.11. P.fol.36.

1 Coniuration, or Inuocation of any euil ſpirit, for any intent &c. or to bee counſelling or ayding thereto, is felony. See *Exodus* 22.18. 1.Iac.12. P.fol.6.7.8.

To conſult, couenant with, entertaine, imploy, feed, or reward, any euill ſpirit, is felony.

3 To

3 To take vp any dead body, or any part thereof to bee imployed or vſed in any manner of witchcraft, is felony.

4 Alſo to vſe or practiſe Witchcraft, Enchantment, Charme, or Sorcerie, whereby any perſon ſhall be killed, pined, or lamed in any part of their body, or to bee counſelling or ayding thereto, is felonie.

5 Alſo the ſecond time to practiſe Witchcraft, &c. thereby to declare where any treaſure may be found.

6 Or where any goods loſt, or ſtollen, may be found.

7 Or wherby any cattel or goods ſhalbe deſtroyd or impair'd

8 Or to the intent to prouoke any perſon to loue.

Or to the intent to hurt any perſon in their body, though it bee not effected: All theſe are felony, *ſc.* the ſecond offence.

Now againſt theſe witches the Iuſtices of peace may not alwaies expect direct euidence, ſeeing all their works are the works of darkneſſe, and no witneſſes preſent with them to accuſe them; And therefore for their better diſcouery, I thought good here to inſert certaine obſeruations out of the booke of diſcouery of the Witches that were arraigned at Lancaſter, *ann. Dom.* 1612. before Sir *Iames Altham*, and Sir *Edw. Bromely* Iudges of Aſſiſe there. *Witches.*

1 They haue ordinarily a familiar, or ſpirit, which appeareth to them.

2 Their ſaid familiar hath ſome bigg or place vpon their body, where he ſucketh them.

3 They haue often pictures of clay, or waxe (like a man, &c.) found in their houſe.

4 If the dead body bleed, vpon the Witches touching it.

5 The teſtimony of the perſon hurt, vpon his death.

6 The examination and confeſſion of the children, or ſeruants of the Witch.

7 Their owne voluntary confeſſion, which exceeds all other euidence.

Embezilling the Kings Maieſties Ordonance, armor, or other habiliments of warre, or victuals prouided for ſouldiers, &c. If it be by any perſon hauing the cuſtody thereof, and to the value of xx.s. though at ſeuerall times, it is felony. 31. *Eliz.* 4. P. fol. 33.

Embezilling of any Record, Writ, Returne, Panel, Proceſſe, or Warrant of Atturney in the Chauncery, Exchequer, K. Bench, Common place, or Treaſury, is felony in the parties, their counſellors, procurors, or abbettors. 8 H. 6. 12. P. fol. 18.

So alſo the raſing of ſuch Record, is felony: yet if a Iudge do imbezill, or raſe a Record, this is but miſpriſion in the Iudge. 2. *R.* 3. *Br. Cor.* 174. 2 R. 3. 9. Co. 11. 34. See 8 R. 2. c. 4.

But it ſeemeth the Iuſtices of Peace haue not to doe with theſe two laſt ſorts of felonies, (*ſc.* with imbeſilling, or raſing of Records) for that theſe felonies are committed to other Iudges to deale with by the ſame ſtatute of 8. *H.6.* ſee *P.* Records. 4. Lamb. 529.

Egyptians; *ſc.* if any perſon of the age of foureteene yeeres or aboue, ſhall call himſelfe an Egyptians; or ſhall be in the company of ſuch, or ſhall diſguiſe himſelfe in apparrell, ſpeech, or otherwiſe like ſuch, and ſhalbe or continue in England one moneth, at one, or ſeuerall times, it is felony. 5. Eliz. 20. P. fol. 13.

Forging of Euidences, *ſc.* of any Deed, Charter, Obligation, Bill, Releaſe, or other writing ſealed, or of any Court Roll, or Will, or of any Acquittance; or publiſhing any ſuch writing knowing the ſame to bee falſe; The ſecond offence is felony: But it ſeemeth alſo that the Iuſtices of Peace haue not to deale with this, for that they cannot well take notice of the former conviction. 5. Eliz. 14. P. fol. 16. Lamb. 229.

Gaolers (by durelle and paine) enforcing their priſoner, to become an approuer (that is an accuſer of others as coadiutors with him in felony) this is felony in ſuch Gaoler. 14. *Ed.* 3. 10. P. fol. 17.

Hawkes; whoſoeuer findeth any Hawke that is loſt, if he ſhall not immediately bring the ſame to the Sheriffe of the ſame Countie, to bee proclamed &c. but doeth imbezill the Hawke, it is felonie. 5. Ed. 2. 22. 7. H. 8. 13. P. fol. 20.

So is it in him whoſoeuer that taketh vp any Hawke, and concealeth the ſame from the owner, or his Faulconer; or that taketh away any Hawke from the owner, or ſtealeth any hawke, and carieth it away not obſeruing the foreſaid ordinance. P. Hawkes 2. vide.

Hunting of deere or conies, in any parke, foreſt, or warrein vnlawfully in the night time, or with viſors, or other diſguiſings, and (vpon examination by a Iuſt. of P. &c.) to conceale the offence, or any offendor therein, is felony in ſuch concealor: But if ſuch offendor (vpon his examination) ſhal confeſſe all the trueth, then he is but finable. See hereof *antea tit. Hunting.* 1. H. 7. 7. P. fol. 24. Lamb. 271.

If any perſon to be arreſted for ſuch offence ſhall diſobey the arreſt: Or if any perſon ſhall make reſcous; ſo that the warrant (of the Iuſt. of P. &c.) for arreſting them, bee not executed, it is felonie.

Quære, if ſuch hunting, and concealement, or reſiſtance, bee felony, where the offenders killed no Deere, &c. it ſeemeth no: for all the Preſidents do runne, *occiderunt & aſportauerunt &c.* See *Lamb. Cromp. & Weſt.*

If any perſon ſhall take a tame beaſt, or other thing in a parke, by manner of Robbery, it is felony. 3. Ed. 1. 20. P. fol. 24.

Mariage

1 Iac.11. P.fel 4. Mariage, *ſc.* if any perſon being maried, ſhall marry a ſecond husband or wife, the firſt being aliue, &c. it is felony.

P.fel.21. Multiplication of Gold or Siluer, or to practiſe that arte, is felony. 5.*H.*4.4.

1.Iac.31. P.fel.3. Plague, *ſc.* If any perſon being infected with the plague, which being commaunded by any Officer to keepe his houſe, ſhall notwithſtanding goe abroad, and conuerſe in company, hauing an infectious ſore vpon him, it is felony.

P.fel.37. P.Murder. Poyſoning, *ſc.* wilfull killing of any perſon by poyſon, is wilful murder in the offenders, their aiders, abbetters, procurers and counſellors, 1.*Ed.*6.12.*Co.*11.31. But the partie poiſoned muſt die thereof within a yere and a day after the poiſon receiued. See *antea* in the other title, *Felony, Murder.*

P.Ieſuites 3. Popiſh Prieſtes: to receiue, relieue, aid or maintaine any ſuch, &c. is felony. See hereof *antea tit. High Treaſon.*

P.fel.5. Popiſh Recuſants, and ſuch other Recuſants or ſectaries which (by the ſtatutes of 35.*Eliz.*1.*&* 2.) are to abiure, if they ſhall refuſe to abiure; or after abiuration ſhall not depart the realme according as they ſhalbe appointed; or after ſuch departure ſhal returne againe without the Kings ſpeciall licence, it is felony.

P.fel.25. P.Puru.30. Lamb.406. Cromp.48. Purueyors, *ſc.* If any Purueyor, Taker, or other perſon, their deputies or ſeruants, ſhall make any purueyance, takings (or priſes) for the Kings Maieſties houſe, of any thing aboue the value of twelue pence.

P.Puru.3.4. 1 Without warrant, or commiſſion vnder the great ſeale.

36.Ed.3.2. 2 Or ſhall buy or prouide any thing in other manner then is conteined in their warrant. *P.Puru.*19.*fel.*25.*Raſt.*350.

P.fel.25. P.Puru.19. 3 Or ſhal take any cariage in other maner then is compriſed in their Commiſſion; *Stat.*36.*Ed.*3.2.*P.*19.

36.Ed.3.5. Raſt.351. Cromp.48. 4 Or ſhall carrie away any thing againſt the owners will, without paying or agreeing for the ſame. See 11.*H.*4.28.*a.*

5.Ed.3.2. 25.Ed.3.1. 29.Ed.3.2. P.fel.25. P.puru.17. 5 Or ſhall not make his prouiſion or purueyance, by the teſtimony and appraiſement of the Conſtables, and foure neighbors ſworn, (if the purueyor and owner cannot well agree) And ſhall not deliuer Tales, or Indentures, ſealed with his ſeale, teſtifying the ſame.

P.fel.25. P.Puru.18. 6 Or ſhall take more victuals or cariages for the Kings houſe, then he ſhall deliuer to the ſame houſe.

P.fel.25. P.Puru.9. 7 Or ſhall take any ſheepe with their woolls, betweene Eaſter and Midſommer, at ſmall priſes; or more then be ſufficient for the Kings houſe, and to carry them to his own houſe, & ſheare them.

In euery of theſe caſes it ſeemeth to be felony in ſuch Purueyour, their deputies and ſeruants.

If a Purueyour ſhall take any prouiſion for the Kings houſe, by force of his Commiſſion, And ſhall after ſell away the ſame, now his firſt taking is become tortious, and he is puniſhable as a Treſpaſſer, if not as a felon *ab initio.* Co.8.146.

If any ſubiects Chator or other officer, ſhall take any thing againſt the owners conſent, or doe not pay for it preſently, it ſeemeth felony. *P.Pur.*1. 36.E.3.6 7.R.2.8.

Rebellious and vnlawfull aſſemblies of any perſons, to the number of twelue or aboue, &c. their procurors or relieuers, it was felony in them all. 1.M.12. P.fol.27.

Rogues, being by the Iuſtices of peace at their quarter Seſſions, adiudged incorrigible and dangerous, and therefore by them baniſhed this realme, if they ſhall returne again into any part of this realme without licence, it is felony. 39 Eliz.4 P.fol.33.

Rogues, adiudged (as aforeſaid) incorrigible or dangerous, ſhall by the iudgement of the ſame Iuſtices, in their open Seſſions of the peace, be branded in the left ſhoulder, &c. And after ſuch puniſhment, if any ſo puniſhed ſhal offend againe in begging, or wandring contrary to the ſtatutes of 39. *Eliz.* 4. or 1. *Iacobi.* 7. it is Felony. 1.Ia.7. P.va.4.

Robbing in the day time of any dwelling houſe, or of any out houſe, as of a *Barne, or Stable &c.) if it bee to the value of fiue ſhillings or aboue (although no perſon be therein:) or to rob any houſe by day or by night, any perſon being therin, and therby put in feare: Or to rob any perſon in any part of his dwelling place or houſe, the owner or dweller, his wife, children, or ſeruants being therein, or in any other place within the precinct of the ſame houſe or place (ſleeping or waking:) Or to robbe any boothe, or tent in a faire or market, the owner, his wife, children, or any ſeruant being thē within the ſame, ſleeping or waking, euery of theſe offences are now by ſtatute made felony, and as penall as Burglary, by the loſſe of the benefit of Clergie. But to breake a houſe in the day time, although he hath a felonious intent; yet if he carieth away nothing, this is no fellonie: for there muſt be an actuall felony done, beſides the breaking of the houſe in the day. And by the report of Maſter *Daliſon*, theſe ſtatutes ſhall bee ſtraightly conſtrued (in fauour of life) and according to the bare letter; ſo that if the Robbery be done by day, and there be in the houſe but one ſeruant onely, or there bee in the houſe, boothe, or tent, but a ſtranger, or ſoiourner onely; the fact ſhall not be adiudged an offence againſt theſe ſtatutes. 39.Eliz.15. *Co.11.36. P.Clergy.13. 5.Ed.6.9. Lambt.405. See Co.11.31. 32.&36. Stamf.126. Lamb.261.

Seruaunts imbezelling their Maſters goods. See hereof *antea tit. Theft.*

Souldiers

3. Iac. 4. P. Recuſants 48. Souldiers, *ſc.* if any ſubiect ſhall paſſe out of this realme, to ſerue any forreine prince &c. not hauing before their paſſing, taken their oath of allegeance &c. before the officer thereunto appointed, it is felony.

If any gentleman, or perſon of higher degree, or captaine or other officer in campe, ſhall paſſe out of this realme, to ſerue any foreine prince &c. before they ſhall become bound to the kings maieſtie, with two ſureties (before the officer thereto appointed) with condition to this effect, *viz.* not to bee reconciled to the Pope &c. nor to make, or conſent vnto any conſpiracie againſt the K. &c. but to diſcloſe all conſpiracies vpon knowledge therof &c. it is felony. *Ibidem.*

18 H. 6. 19. P. Fel. 23. P. Capt. 3. Souldiers entred of record, and hauing taken preſt money, or parcell of their wages of their captaine, if they ſhall not paſſe the ſea, or goe with their captaine: or being in the kings ſeruice, ſhall depart without licence, it is felony. See *Co.* 6. 27. that this ſtatute of 18. *H.* 6. 19. is now of little force: But yet the departure of a ſouldier without licence is felonie by the ſtatute 7. *H.* 7. 1. & 3. *H.* 8. 5. which two ſtatutes are yet in force, and are acts perpetuall. *Co. ibid.*

Co. 6. 27.

Kaſt. 50 Souldiers, if they ſhall depart without licence, after they haue ſerued in the Kings wars, it is felonie. 2. *E.* 6. *c.* 2. *Co.* 6. 27.

5 Eliz. 5. P. Fel. 23. Euery Mariner or Gunner hauing taken preſt wages, to ſerue the king on the ſea, that ſhall not come vnto, or ſhall depart from their captaine without licence, it is felony.

39. Eliz. 17. P. Fel. 35. 1 Souldiers and Mariners, which ſhall not ſettle themſelues to ſome lawfull courſe of life, but ſhall wander vp and down idlely, it is felony in them.

2 So is it, if a ſouldier or mariner comming from beyond the ſeas, ſhall not haue a lawfull teſtimoniall vnder the hands of ſome Iuſtice of peace neere the place of his landing, ſetting down therin the place, and time of his landing, and the place vnto which he is to paſſe, and a conuenient time for his paſſage.

3 Or hauing ſuch teſtimoniall, if they ſhall wilfully exceede the time therein limited aboue 14. daies.

4 Or if they ſhall forge or counterfeit any ſuch teſtimoniall, or ſhall haue any ſuch forged teſtimoniall, knowing the ſame to be forged &c.

5 Or being reteined into ſeruice after his arraignement &c. if he ſhall depart within the yeare, without licence of his M^t. in all theſe former caſes, it is felony in ſuch ſouldier &c.

5 El. 5. P. Fel. 22. Tranſporting, or ſending any liue ſheepe out of the K. dominions, the ſecond offence is felony.

18. E. 1. 33. P. Fel. 14. Women; *ſc.* to rauiſh a woman, where ſhe doth neither conſent

ſent before nor after: or to rauiſh any woman with force, though ſhe do conſent after, it is felony.

But a woman that is rauiſhed, ought preſently to leuie huy and cry, or to complaine thereof preſently to ſome credible perſons as it ſeemeth. *Glanuile* 115. Stamf 22. Crom 160.

If the woman at the time of the ſuppoſed rape, doe conceiue with child, by the rauiſhor, this is no rape, for a woman cannot conceiue with child, except ſhe do conſent. Britton 45. Stamf. 24.

If a man rauiſh a woman, who conſenteth for feare of death or dures, yet this is a rauiſhment againſt her will, for that conſent ought to be voluntarie and free. 5. E. 4. 5. Br. Parliament 55.

All ſuch as are preſent, abetting, aiding, or procuring another to commit a rape, are principall felons. 11. H. 4 Stamf. 44.

It is a good plea, in an appeale of rape, to ſay that before the rauiſhment ſuppoſed, ſhee was his concubine, as Maſter *Bracton* ſaieth. Stamf 24.

And yet to rauiſh an harlot againſt her will, is felony; for *licet meretrix fuerit ante, certe tunc temporis non fuit, cum nequiter eius reclamando conſentire noluit. Bracton lib. 2.* Cromp. 47.

Alſo to take any maid, widdow, or wife (hauing lands or goods, or being heire apparant to her anceſtor) againſt her wil vnlawfully, is felony; and to receiue any ſo taken knowing thereof, or to procure and abet the ſame, is felony. 3. H. 7. 2. P. 1 el. 16.

But this act doth not extend to any perſon taking any woman, only claiming her as his ward, or bondman.

The taking away of a maide vnder ſixteene yeares of age, without the conſent of her parents or gouernors, or contracting mariage with her, or deflowring her, is no felony, but yet ſhall be puniſhed with long impriſonment, without baile, or with grieuous fine. 4 & 5 Ph. & M. P. Woman. See Co. 3. 37. &c.

But vnlawfully and carnally to know and abuſe any woman child vnder the age of ten yeares, is felony, although ſuch child conſents before. *Cromp.* 47. 18. El. 6. P. Fel. 14.

Alſo to take away a mans wife with the goods of her husband, whether it bee againſt her will, or againſt her husbands will, ſeemeth to be felony, by the ſtatute of Weſtmin. 2. *ca.* 34. the words thereof are *De mulieribus abductis cum bonis virorum ſuorum, habeat rex ſectam de bonis ſic aſportatis.* 13 aſſ 6. Br. Coron. 77. Stamf. 94. Cromp. 35.

But if the wife take her husbands goods, and ſo goeth away voluntarily with another man, and with thoſe goods: or deliuereth thoſe goods to another man; theſe two laſt caſes ſeeme not to be felony. 8. Coron. 455. Stamf. 27.

Acce

Acceſſories.

2.H.7.fo.10. Stamf.40. Br.Treaſ.19.

IN high treaſon, there bee no Acceſſories, for all the Aduiſers, Counſellors, Perſuaders, and Aſſiſtants therein, bee principalls, and as much as if they were actors or doers: yea all that ſhall aduiſe, counſell, perſuade, commaund, procure, or hire another to do any treaſon or felonie (they being in deede the verie cauſe of the fact) may ſeeme as culpable, if not more, then the principall actor; and the rule is, *plus peccat author quam actor*: Examples alſo we haue hereof in the booke of God, *Gen.*3. The ſerpent the procurer of the firſt ſinne, by Gods own iudgement had a greater punilhment, then the woman or man: Againe, 2. *Sam.* 12.9. *Dauid* is told (from God) that he had killed *Vrias*, wheras he only commanded *Ioab* to kill him, &c. yet in caſe of felony our law is otherwiſe. *In treaſon.*

Stamf.40. Note, whatſoeuer offence doth make a man acceſſorie in felony, the like offence maketh him a principall in high treaſon.

But yet it ſeemeth this is to be vnderſtood of acceſſories before the treaſon; for receiuing, aiding, and comforting a traitor, after the offence (knowing the ſame) was holden to be but miſpriſion of treaſon, 12. & 13. *Eliz. Dyer* 296. And yet by ſome other authorities, the receiuing of Traitours after the offence, knowing thereof, is holden to bee treaſon. See 3. *H.*7.10. *Br. Treaſon* 19. *Huſſey* chiefe Iuſtice, and *Cromp.*42.*b.* who alledgeth the booke called the Expoſition of the termes of the law. Dyer 296.

In petie treaſon there is a principall, and there be acceſſories, as there is in felonies.

In felony, there be two ſorts of acceſſories: *In felonie.*

The one is acceſſorie before the felony committed:

The other is acceſſorie after the offence done.

But he that is preſent at the time of the felonie committed (be it in caſe of murder, robberie, burglarie, or larcernie) is a principall, if he were either a procurer, or mouer, or bee aider, comforter, or conſenter therto, although at that preſent he doth nothing. See before 172.

Stamf.40.b. If one being preſent at the killing or robbing of a man, doth nothing, yet would haue aided his companion, if there had been need, he ſhalbe adiudged a principall.

Stamf.40.b. Cromp.44 But if one be preſent by chaunce, and ſeeth when another is ſlaine, or robbed, or when any other felony is committed, and doth not come in companie with the felons, nor is of their confederacie,

federacie, although he doth not make any reſiſtance, or diſturbe the felon, or leuie huy and crie, nor diſcouereth the ſame, but concealeth it; yet it no felony in him, but miſpriſion of felony, and finable.

Alſo in ſome caſes a man may be a principall, although he bee not preſent at the time of the felony committed: as if *A.* knowing drinke to be poiſoned, perſwades *B.* to drinke it, and after *B.* (in the abſence of *A.*) doth drinke it, and dyeth thereof, *A.* is here a principall murderer, *Co.* 4. 44. See other like caſes of poiſoning. *antea tit. Felonie, Murder, & poſtea ſub hoc tit. Acceſſaries.*

Note that the acceſſarie fact in felonie, whether before or after, though it be another offence, and diſtinct from the principal fact, yet it is alſo felony.

Before the fact.

Acceſſaries before the felony, are ſuch as will commaund, hire, procure, moue, conſpire, counſel, abet, or conſent to commit any pettie treaſon, murder, robberie, rape, burglarie, or larcenie, but are not preſent thereat, yet all ſuch are thereby felons, when the felony is committed. Præcipiendo. Perſuadendo. Conſulendo. Conſentiendo.

But here note ſome differences are to be obſerued, when the principall and chiefe offendor, or actor doth not accompliſh the the fact altogether in the ſelfe ſame ſort, as it it was before hand agreed, and plotted betweene him and the acceſſarie: and therefore if *A.* command *B.* to lay hold vpon *C.* and *B.* goeth and robbeth *C.* this is no felony in *A.* (if he be abſent when the robberie is done) for this commaundement might haue beene performed without any robberie.

But if the commandement had bin to beate *C.* and the partie commanded doth kill *C.* or beateth him, ſo that he dyeth thereof, *A.* ſhalbe acceſſarie to this felony and murder; forit is hazard in beating a man, that he may die thereof. 1 Coron. 314.

A. commandeth *B.* to rob one, and in attempting this, another is killed, *A.* ſhalbe acceſſarie to this murder. Plo. 475.

He that commandeth an euill or vnlawfull act to be done, ſhal be adiudged acceſſarie to all that ſhall enſue vpon the ſame euill act, but not to any other diſtinct thing: As if

A. commandeth *B.* to ſteale a horſe, and he ſtealeth an oxe: or to ſteale a white horſe, and hee ſtealeth a blacke: or to robbe a man, by the high way, of his money, and he robs him in his houſe of his plate: or to burne the houſe of *B.* and hee burneth the houſe of *C.* theſe be other acts and felonies then *A.* commaunded to bee done, and therefore *A.* ſhall not be adiudged acceſſarie to them. Plo. 475.

But if *B.* ſhall commit the ſame felonie which *A.* did commaund or counſell to be done, though he doth it at another time,

or

or in another ſort, then *A.* did command or counſell, yet here *A.* ſhalbe acceſſary thereto.

As if *A.* doth counſell *B.* to kill *C.* by poyſon, and he killeth him with his dagger: or to kill *C.* by the high-way, and he killeth him in his houſe: or to kill him one day, and hee killeth him vpon an other day, in theſe, and the like caſes, *A.* ſhall be acceſſorie to the murder.

Plo. 475. Lamb. 283. *A.* counſelleth *B.* to poyſon *C.* and to that end *A.* buyeth poyſon, and deliuereth it to *B.* who tempereth it in an apple, and deliuereth it to *C.* with intent to poiſon him, and *C.* knowing nothing, giueth the apple to *E.* who eateth it, and dieth thereof; here *A.* is not acceſſorie to the murder of *E.* yet it is murder in *B.*

A. counſelleth *B.* to kil *C.* and before he hath killed him, *A.* doth repent him, and countermands it, charging *B.* not to kil *C.* and yet after *B.* doth kill *C.* here *A.* ſhall not be adiudged acceſſorie to the death of *C.* for the law adiudgeth no man acceſſory to a felonie before the fact, but ſuch as continue that mind at the time that the ſame felony is done and executed.

Dyer 186. But if *A.* counſelleth a woman to murder the child in her bodie; and after the child is borne, and then is murdred by the commandement of the woman, in the abſence of *A.* yet he is acceſſorie by his counſelling it before the birth, and not countermaunding it, *Dyer* 186.

Lambt. 285. A man foreknoweth of a felony intended to be done, and doth conceale it, and ſo ſuffereth it to be effected, this maketh him no acceſſory to the felony, except hee conſenteth thereto: but ſuch concealement ſeemeth to be only miſpriſion of felony, & finable: And yet the rule is, *Qui non prohibet quod prohibere poteſt, conſentit. Ideo quære.*

14. H. 7. 31.

Co. 444. Note that in manſlaughter, there can be no acceſſorie before the fact; for manſlaughter is vpon a ſoden falling out.

Stamf. 41. Acceſſories after the offence, are they, who knowing that another hath committed a felonie, do felonioully receiue or harbour him, or relieue, aſſiſt, comfort, or aide him, whether it be before the attainder of the felon, or after his attainder. *After the fact.*

As to comfort or relieue a felon (before hee is attainted) with mony, meate, drinke, or lodging, knowing of the felony, maketh one acceſſorie.

So to lend him a horſe to go his way withall.

Stamf. 41. But to aide him by his good word, or ſuit, for his deliuerance, or to ſend a letter for his inlargement, this maketh not a man acceſſory to the felony. Alſo to relieue him being in priſon maketh not a man acceſſorie.

Lambt. 286. Cromp. 42. A felon that goeth vnder bayle, and ſtands bound to appeare for

for his triall, to receiue, harbour, or relieue ſuch a one, with mony, or victual, breedeth no danger of being an acceſſorie, becauſe the felony in theſe laſt caſes cannot bee concealed, nor the triall hindred by it.

A felon getteth his pardon, ſuch as ſhall receiue or relieue him after, ſhall not bee accompted acceſſorie: But to receiue, or releiue him before his pardon obtained is felonie, See *Plo.* 476 yet it ſeemeth vpon this pardon, ſuch acceſſ. before ſhall be diſcharged.

A felon is attainted, by verdict, confeſſion, or by vtlarie, to receiue, harbour, or relieue ſuch a one, by any perſon dwelling in the ſame countie where the felon is attainted, it maketh ſuch receiuer or aider an acceſſorie to the felonie, although ſuch receiuer &c. did not know of the felonie; becauſe by the attainder of the felon, he is a felon of record, whereof euerie perſon dwelling in the ſame countie, is to take notice: yet maſter *Bracton* requireth a more direct knowledge in the parties to make them acceſſorie: for albeit a record (and eſpecially the pronouncing of an vtlarie) be ſo notorious, that euery man may eaſily come to know the (vpon yet were it an ouer great extremitie, that euery man ſhould ſame: the peril of his owne life) take certaine knowledge therof: which opinion of maſter *Bractons*, maſter *Lambert* alſo holdeth to be very reaſonable. F. Coron. 377. Stamf. 96. Dyer 355. Lamb. 289.

But a felon attainted (by verdict, confeſſion, or vtlarie) in one county, and another doth receiue, or aide him in another county, this maketh ſuch receiuer or aider no acceſſorie to the felony, vnleſſe he did alſo know of the felony. F. Coron. 377. Vi. Stamf. 41.

If a feme couert ſhall relieue, or receiue, and keepe companie with her husband, knowing him to be a felon, ſhe is no acceſſory thereby: for a woman couert cannot be acceſſorie in felony to her husband, for ſhe ought to relieue him, and not to diſcouer his counſell: But if ſhe receiueth &c. another felon, ſhe is an acceſſorie. F. Coron. 383. Stamf. 26.

A felon who fled to the houſe of his naturall brother, and the brother ſhut the fore doore againſt the purſuers, and conueyed the felon out of his houſe at a backe doore, whereby he gat to the church, this brother was adiudged an acceſſory for it, for he was a meanes of the eſcape. See Staf. 43. c. ſuch a matter.

Quære, if a felon flieth, and commeth to his friends houſe, and his friend doth ſhut the doore gainſt him, and yet maketh the purſuers beleeue that he is in the houſe, whereas he eſcapeth, if this make not the friend an acceſſorie.

Reſcous. If one do reſcue him that is arreſted for felony, hee is a principall felon, and not an acceſſorie. 1. H. 7. 8. Stamf. 43. c.

Recei-

22.aſſ.(9. 25.E.3.39. 9.H.4.41. Stamf.43 b.

Receiuing or buying ſtolne goods, knowing they were ſtolne, maketh not a man acceſſory to the felony, vnleſſe hee receiueth alſo (or aideth) the felon himſelfe: yet M^r. *Cromp.* maketh a *quære* thereof, and alledgeth ſome caſes to the contrary. See *Cromp. fol.* 41.42.43. But herein *Buying ſtolne goods.*

There ſeemes a difference betweene a buyer (being a ſtranger to the felon, and who for valuable conſideration ſhall buy ſuch goods) and a receiuer or buyer, who is adherent or companion to the felon, or that by couin ſhall receiue, or buy ſuch goods. See the preamble of the ſtatute, 2. & 3. *Ed.6.ca.*24.

Cromp.43.

A man buyeth ſtolne goods for 5.s. which are worth 20.s. this maketh the buyer an acceſſorie, by the opinion of maſter *Cromp. fol.* 43. for it may wel appeare by the price, that the ſeller came not truely by them; and therefore it is ſafe to lay hold of ſuch ſellers.

Br. Coron.122. Lambt.286. Cromp.37.41. 42. PR.131. Termes of the law.184.

A man purſueth and taketh a felon that hath ſtolne his goods, and then taketh his goods againe, & ſuffereth the thiefe to eſcape, he is no acceſſorie thereby by ſome opinions, for he may *in actio agere ciuiliter*, or *criminaliter*, at his pleaſure, as maſter *Bracton* writeth, *Stamf.* 28. *quære tamen* for maſter *Stamf. fol.*40. ſaith, If hee takes his goods againe from the felon to fauour him this is theft-boot, the puniſhment whereof in auncient time was of life and member; and by ſome it it holden to bee felony at this day: The like ſeemeth to bee, if he takes his goods againe from the felon, and then fauoureth him, and letteth him go. *Taking again ſtolne goods.*

6.E.6. Lamb.286. Cromp.41. PR.131.

But if the party robbed take money &c. of the theefe, to the end he ſhall fauour him, or ſhall not giue euidence againſt him, whereby the theefe eſcapeth, now is he an acceſſorie to the felony of his owne goods, by good opinion; though ſome other ſeeme to take this for theft-boot, and ſo to bee puniſhable at this day, only by ranſome and impriſonment.

If the party robbed, or if he that ſhal haue any goods ſtolne from him (after complaint by him made of the felony, to a Iuſtice of peace, or to the Conſtable) ſhall then take his goods againe, and will not proſecute this matter againſt the felon any further, but will ſuffer him to eſcape, after he was once ſo charged, and perhaps arreſted for the ſame, *Quære* if this maketh not him an acceſſory, for that he did once *agere criminaliter*, by complaint made to the officer againſt the felon.

I thinke in ſuch caſe, the Iuſt. of P. ſhall do well (at leaſt) to bind ouer both the one and the other to the quarter ſeſſions, or to the gaole deliuerie.

27.aſſ.62. Lamb.285.

But if vpon huy & cry, a man do arreſt a theefe that hath ſtolne another mans goods, and do then take the goods from the felon,

and ſo let him go, this maketh him an acceſſorie to the ſelony, if not a principall felon.

Note in all caſes of an acceſſorie after the fact, it is requiſite, that the fact (to which he is an acceſſorie) bee a felonie at the very time in which he becommeth an acceſſorie to it: For if *A.* giueth a mortall wound to *B.* vpon the firſt of March, and *C.* knowing thereof, receiueth &c. *A.* two or three daies together, and letteth him goe, and after *B.* dyeth of the wound within the yere, yet this receipt &c. maketh *C.* no acceſſory, becauſe the principall fact was no felonie at the time either of the receipt, or of the letting him go. Stamf. 187.

By the ſtatute 2. *Ed. 6. cap.* 24. acceſſories may be to a felonie done in another countie: wheras before that ſtatute the common law was otherwiſe; for that thoſe in another county, vpon the trial, could not haue coniſance of the principall offence &c. P. Trial 2. Stam. 41. f. 63. a.

But now by the ſaid ſtat. there ſhalbe a certificat from the *Cuſtos Rotulorum* of the county where the principal ſhal be attainted or conuicted &c.

Note that if an offence bee made felonie by ſtat. although the ſame ſtat. doth not expreſſely make mention of procurers, counſellors, abetters, receiuers, conſenters, and aiders, &c. yet they ſhal be taken as acceſſories (within the compaſſe of the ſame ſtat.) euen in the ſame maner, as if it were felony at the common law. Lambt 281. Stamf. 44.

A man may be an acceſſory to an acceſſorie, as if he ſhall receiue, relieue, or comfort him who is acceſſory to a felon, knowing the ſame. 26 aſſ. 52. f. Coron. 196.

Although the acceſſory ſhalbe puniſhed, and ſhal haue iudgement of life and member, as well as the principall which did the felonie, yet the principall ought firſt to be attainted (by verdict, confeſſion, or vtlarie) before the acceſſorie can be charged or put to anſwere: and the acquitall of the principall, is the acquitall of the acceſſorie; for *vbi non eſt principalis, non poteſt eſſe acceſſorius*: But yet the acceſſorie ſhall be attached, and ſurely kept (and ſhalbe committed by the Iuſtice of peace &c.) vntil the principal be attached and attainted. P. Appeale 3. Co. 4. 43. & 9. 117. 119. Plo. 38. 39.

And if the principall bee attainted, though erroniouſly, that ſhall not auaile the acceſſorie, but he muſt anſwere &c. *Co. 9. 68. b. & 119.*

If the principall dye before he be attainted, or if the principall be found not guilty by verdict, or be found by verdict that hee ſlew the other in his own defence, or if after conuiction, by verdict, confeſſion, or vtlary, & before iudgement, he hath his clergy, or getteth his pardon, the acceſſory in all theſe caſes ſhall be diſcharged: But it is not ſafe for the Iuſtice of peace to diſcharge Co. 4. 47. 44. f. Carom. 165. & 378.

ſuch

ſuch an acceſſorie out of ſeſſions.

Cromp.43.b. A man killeth another *ſe defendendo*, or by miſaduenture, and it is ſo found vpon his triall, the acceſſorie ſhall bee diſcharged, for that in theſe caſes the principal ſhal not haue iudgement of death *Et omne acceſſar. ſequitur ſuum principale.*

3.E.6. Br.Coron.178. If a man committeth felony in the time of one King, hee may bee charged and arraigned for it after, in the time of another King. *Rules concerning felony.*

13.E.4.9. If a man do commit murder, ſteale goods, or do any other felony in one county, and then fleth into another county, and is taken there, and brought before a Iuſt. of P. there, he ſhalbe (by the Iuſt.) impriſoned in the gaole of the county where he is taken, and after ſhalbe remoued by the K. writ into the gaole of the countie where he committed the felonie.

4.H.7.5. 4.H.8. Br.Coron.171 Co.7.2. If a man committeth a robbery, or ſtealeth a horſe, beaſt or other goods in one county, and doth carie, lead, or driue the goods into another county, it is felony in euery county whither he doth carry or driue thoſe goods, and the offendor may be indicted, or appealed of felony, or theft, and be arraigned, and haue his iudgement in any of thoſe counties: but the offendor cannot be appealed or indicted of robberie, but only in the county where the robbery was done, for it is not robbery in any other county; for robbery muſt be done to the perſon of a man.

13.E.4.3. 4.H.7.5. If a felon doe ſteale another mans goods, and after another ſtealeth the ſame from him, the owner of the goods may charge the firſt or ſecond felon, at his choice.

PR.130. Alſo if a man ſhall deliuer cloth to a tailor to make a garment, if the cloth be ſtolne from the tailor, the offendor may be charged and endicted for ſtealing the ſame, either at the owners ſuit, or at the tailors.

Dyer 99. Alſo an indictment may be, *Quod bona & catalla cuiuſdam hominis ignoti felonice cepit*, See here before 235. And it ſeemeth any man may in ſuch caſe both informe the court, and by their direction may preferre an indictment againſt the felon, and giue euidence to the Enqueſt therein.

5.H.6.15. And ſo it ſeemeth, if the owner be knowne, but will not charge the felon therewith, any other perſon (eſpecially after proclamation made in the court, that if any will enforme for the king, hee ſhalbe heard) may ſafely informe the court, prefer an indictment, and giue in euidence for the K. againſt the felon, becauſe it is for the K. aduantage, to haue the forfeiture of the felons goods, yea it ſeemeth in the 2. former caſes, that if the I. of P. ſhal heare of any perſon that can informe any materiall thing againſt ſuch a felon, or againſt any felon, the Iuſtice in his diſcretion may ſend for

him, take his information, and may bind him to giue euidence against such felon.

Also if any robbery or theft be committed, and the party robbed, or other owner of the goods, wil not charge the felon therewith, yet it semeth euery Iustice of P. may cause such felon (or any person suspected for such felony, to be apprehended, & may examine them therof, and also may send aswell for the party robbed &c. as for all such other persons as can informe any thing material concerning the said felony, and may take their informations (vpon oath) and if vpon such examination they shall finde cause, the said Iu. may commit the offendors, and bind ouer the informer. See *antea* in the other tit. *Felony.*

Huy and cry. Note also (for the better preuention, and apprehending of felons (that vpon all homicides, burglaries, robberies, and other felonies, and when men are put in great danger, huy and crie shalbe leuied, and euery man shall follow the huy and crie, and whosoeuer doth not, shall bee attached to appeare before the Iustices of gaole deliuery, it seemeth any Iust. of P. may bind them ouer, and that by the commiss. 3 E.1. P.Cel.38. & Huy & cry 1

Yea vpon any felony committed, all men generally shall bee ready (at the commandement of the sherife, and at the cry of the countrie) to pursue and arrest felons. *ibid.*

And such huy and cry and pursuit shall be made from towne to towne, and from countrie to countrie: and shall be made by horsemen and footmen: and in case of robberie, if none of the felons be taken within 40. daies after the felony committed, then the whole hundred where the robbery was done, shall answere for the robbery done, and the damages: but yet the inhabitants of any other hundred wherein negligence, fault, or defect of pursuit & fresh suit, shal happen to be, shal answer and satisfie the one moity, & halfe of all and euery such sums of money & damages, See more here before *tit. Huy and Crie, and Robberie.* 13.E.1.ca.2. 27.El.13.

Escape. And if a man be slaine in the day time, in a towne not walled, and the murderer escape, the whole towne shall bee amerced for this escape: But if it be in a city or towne walled, then if the murder &c. were by day, or by night, they shall bee amerced for the escape. *Fitz. Coron.* 238. 293. 299. & 302. *Stamf.* 33. *l.* 3. *H.* 7. 1. *P. Coroners* 13.

And if a man bee slaine out of any towne, then the hundred shalbe charged therewith, and for the insufficiency of the hundred, all the county shalbe charged &c. *Stamf.* 34. *f.* And the Iust. of P. are to enquire of such escapes, and to certifie the same into the K. Bench. *P. Iustices* 19.

Also euery man is a sufficient bailife and officer to apprehend him PR.156.

him that is purſued by huy and cry. and if he bee taken with the thing ſuppoſed to be ſtollen, though hee neither be of euill name, nor a ſtranger: yet euery man may commit as well ſuch ſuſpected perſon, as alſo ſuch goods, to the towne where they bee apprehended, to anſwere to the king according to the law, And the conſtables of the towne are to carie before ſome Iuſt. of P. aſwell ſuch priſoners, as alſo the bringers, that the Iuſtice may take their information againſt ſuch priſoner, and may examine and commit ſuch offendor, or perſon ſo ſuſpected.

But if a man do leuie huy and cry vpon another without cauſe, both the one and the other ſhall be attached and caried before a Iuſt. of P. to anſwere it, as diſturbers of the peace, and to be bound to their good behauiour.

9.E.4.9. Co.5.92. Note alſo that the kings officer may breake open any mans houſe, to apprehend any felon, or any perſon that is ſuſpected of felonie, being in the ſaid houſe. See hereof *antea tit. Forcible Entrie.*

11.E.1.4. P.Watch 1.2. And for the better detecting and apprehending of ſuch offendors, in great townes being walled, the gates are to be ſhut from the ſunne ſetting, vntil the ſunne riſing: and no man ſhalbe lodged in the ſuburbes, from nine of the clocke, vntill day, vnleſſe his hoſt will anſwere for him: And in all other townes watch ſhall be kept from the feaſt of the Aſcenſion, vntill Michaelmas, from the ſunne ſetting, vntill the ſunne riſing: And if any ſtranger do paſſe by them, he ſhal be arreſted vntill the morning &c. And for ſuch arreſts none ſhalbe puniſhed. And the Conſtables ought to ſee theſe watches duly ſet and kept, and to make preſentment to the Iu. of P. at their ſeſſions of defaults of watches, and of ſuch as lodge ſtrangers, for whom they will not anſwere: and the Iuſt. of Peace at their ſeſſions, ſhall puniſh ſuch as bee found in default. *P.Watch* 2. See *antea tit. Watch.* *Watch.*

Lamb. Office of a Conſtable

Felons goods.

P.Prerog.16. THe king ſhall haue all the goods of felons which be condemned, and which be fugitiue, whereſoeuer the ſaid goods bee found, *ſc.* for their goods moueable and vnmoueable, their corne growing, and the profits of their fee ſimple lands for a yeare and a day, and the iſſues and profits of their other lands, during their liues, and all their debts due to them by ſtatute, recogniſance, obligation, or ſimple contract, and money due vpon accompts: and the king, or hee to whom the king ſhall giue ſuch debt, ſhall haue an action therefore, in his owne name, and yet the king ſhall not pay ſuch debts as the ſaid felons did owe.

Co.3.3.a. F.Coron.317. 334. 19.H.6.47. Dyer 30.

By the common law, after a felon be found guiltie before the Coroner: or that it be found before the Coroner, that he did flie for the felony, there the Coroner, Sherife, vndersherife, or Eschetor &c. may (for the king) seise the goods of the felon, and preise them by an Enquest &c. before his attainder: for by such thing found before the coroner, the goods of the felon are forfeited without further enquirie, or triall of the felon: and yet the officer may not in such case cary the felons goods away, but must leaue them in the custody of the felons neighbours where he dwelt, or in the custody of the town where the goods were: and if he were indicted of felony, yet his goods should not be remoued out of his house vntil he were attainted, but should be kept by his neighbours all the time of his imprisonment, and the felon must haue had reasonable maintenance of his goods for him and his family vntill he were conuicted and found guilty of the felony, and then that which did remaine was the kings. See 25. *E.* 3. *ca.* 14. *P. Indictment* 5.

22. ass. 96. 43. li. 124. 7. H. 4. fo. vlt. Dyer, 191.

And now by the stat. made 1. *R.* 3. *ca.* 3. it is ordained, that if any sherife &c. or other person, do take or seise the goods of any person arrested, and * imprisoned, before the same person be conuicted, or attainted of felony, or that the same goods bee otherwise lawfully forfeited, he shal pay the party grieued the double value of the goods so taken or seised &c. which stat. seemeth to be but a confirmation of the common law, saith M^r. *Stamf. fo.* 193. saue that it giueth the party grieued a more ample recompence, and more speedy remedy, then the common law before did: so that before attainder, or conuiction, the goods of a felon that is in prison ought not to be seised, nor committed to the town, nor taken out of the felons house or possession: for a felon or traitor after the felony or treason committed, and before attainder or conuiction may sell *(bona fide)* for his sustenance &c. his goods or chattles be they reall or personall.

P. Sheriff. 24.

*Quere of such as flye, & vi. stat. 25. E. 3. P. Indict. 5.

Stamf. 193.

Co. 8. 171. Stamf. 192. a.

Nay after attainder hee may grant his goods or lands, and it shall bind all persons except the K. and Lord by escheat: But as to the king, or lord by escheate, a man attainted of treason or felonie is absolutely and perpetually disabled by the corruption of his bloud, so as none of his posterity can claime any inheritance in fee simple as heire to him, or to any other ancestor peramount him. *Co.* 11. 1. *b.*

After the conuiction of a felon (if the goods were in the felons possession at the time of his conuiction) the town presently stands charged therewith, and shall answere for them, though the goods were neuer seised by the officer, nor deliuered to the town, except they can shew what other person hath deteined those goods, and

that

that they could neuer haue possession of them (which exception
Stam. 193. 194 is by the Statute of 31. *Ed.* 3. 3. *P. Estreats.* 3.) So that it shall bee safe for the towne to seise such goods in whose hands soeuer they be found.

Co. 11. 58. P. 179. Conuiction in felonie &c. is where a man is found guilty by verdict of twelue men; or shall confesse the offence vpon his triall; or is outlawed for the same: But in other lesse offences, you shall find that conuiction may be (out of the session) by the confession of the offendour, or vpon examination of witnesses before one, or two Iustices of peace, or vpon the view of the Iust. See hereof *antea tit. may heare and determine.* *Conuiction.*

And sometimes in the sessions vpon the certificate or presentment of the Iust.

And sometimes by confession, or examination of witnesses, in court taken without any verdict. See *Cromp.* 130 131.

And in some cases, conuiction shal be taken for attainder. See *Co.* 11. 59. 60.

Co. 11. 58. Stam. 138. The difference betweene attainder, and conuiction, in case of felonie, is, the person attainted hath iudgement of death giuen vpon him, The person conuict, before iudgement prayeth his Clergie, and hath it, &c. Or after verdict, confession, or outlary, the felon is said to be conuicted, till iudgement be giuen.

Examination of Felons, and Euidence against them.

2. 8. Ph. & M. 10. 1 Iust. 108. WHen any person shall bee brought before a Iustice of peace, for Murder, Manslaughter, or any other felony, or for suspition thereof; before the Iustice shall commit or send such offender to prison, he shall take

1 The examination of such offender.

2 The information of such as bring him; *viz.* hee shall take their examination, and information of the fact, and circumstances thereof; And so much thereof, as shall be materiall to proue the felony, he shall put in writing, within two dayes after the said examination.

3 Also the same Iustice of peace shall binde all such by Recognizance, as doe declare any thing materiall, to prooue the felony, to appeare at the next generall Gaole deliuery, &c. to giue in euidence against such offenders.

4 And then the same Iustice shall make his *Mittimus*, to carrie the offender to the gaole.

Or if such offendor be baileable (and that there be two Iustices of

of peace preſent together, the one of them being of the *Quorum*) after ſuch examination, and information taken, and put in writing, the ſaid Iuſtices of peace may baile ſuch priſoner. 1. & 2. Phil. & Mar. 13. P. Iuſt. 107.

5 And the ſaid Iuſtice or Iuſtices of peace ſhall certifie at the next generall Gaole deliuery, ſuch examination, information, recognizance, and Bailement.

And if any Iuſtice of peace ſhall offend in any thing contrary to the true intent and meaning of either of theſe Statutes of 1. & 2. & 2. 3. *Phil. & M.* the Iuſtices of Gaole deliuery in their diſcretions, ſhall fine euery ſuch Iuſtice of peace.

And yet for Pettie Larcenies, and ſmall Felonies, the offendors may be tried at the Quarter Seſſions, and the examinations and informations may bee certified thither, and the Informers bound thither. See hereof *antea tit. Felony.*

The forme of the Recogniſance. See *poſtea titulo, Recogniſances.*

The forme of the *Mittimus.* See *poſtea tit. Mittimus.*

The forme of the Bailement. See *poſtea tit. Bailements.*

If the offendor vpon his examination before the Iuſtice of peace, ſhall confeſſe the matter, it ſhall not bee amiſſe that the offender ſubſcribes his name or marke vnder ſuch confeſſion made by him.

If the offendor confeſſeth the Felony before the Iuſtice of Peace, and notwithſtanding he letteth him goe, without committing or bailing of him; this ſeemeth to be a voluntary eſcape, and ſo felony in the Iuſtice. *Cromp.* 39. 44.

Alſo if any perſon ſhall bee brought before a Iuſtice of peace, and charged with any manner of Homicide (other then that which ſhall bee done in the orderly execution of Iudgement) As if it were done *ſe defendendo*, or by Caſualtie (which are not Felonies of death) or done by an Infant, a Lunatique, or the like, Yet is it the Iuſtices part, and ſafeſt for him to commit the offendor to priſon, or at leaſt to ioyne with ſome other in the Baylement of him (if the cauſe will ſuffer it) to the ende the partie may bee diſcharged by a lawfull triall. See *antea tit. Homicide.* Lamb. 259.

The like is to bee done where any Felonie is committed, and one brought before the Iuſtice of Peace vpon ſuſpition thereof, though it ſhall appeare to the Iuſtice, that the priſoner is not guiltie thereof. For it is not fit that a man once arreſted and charged with Felonie (or ſuſpition thereof) ſhould bee deliuered by any mans Diſcretion, without further triall.

The

1 & 2. Phil. & Ma. 13.

The Iuſtices of peace haue authoritie (by the wordes of the ſtatute) to bind by Recognizance all ſuch as do declare any thing materiall to prooue the felony, to giue euidence againſt the offendor; And yet the wife is not to be bound to giue euidence, nor be examined againſt her husband; for by the lawes of God, and of this land, ſhe ought not to diſcouer his counſell, or his offence in caſe of Theft, (or other Felonie, as it ſeemeth.) See *Stamford* 26.*b*. Nay, I haue knowne the Iudge of Aſſiſe greatly to diſallow, that the wife ſhould bee examined, or bound to giue in any Euidence againſt others in caſe of Theft, wherein her husband was a partie; And yet her Euidence was pregnant and materiall to haue procured the Felonie againſt others that were parties to the ſame Felonie, and not directly againſt the husband. *See antea tit. Acceſſary.* *By the wife.*

But for children, I finde in the Booke of Diſcouerie of Witches at Lancaſter Aſſiſes, *Anno Dom.* 1612. that the ſonne and daughter of *Elizabeth Deuice*, a Witch, were not onely examined by the Iuſtices of peace againſt their ſaid mother, and the ſaid Examinations certified and openly read vpon the araignement and triall; But the daughter alſo was commanded, and did giue open euidence againſt her mother then priſoner at the Barre. *The childe.*

F. 3. b 4. a. G. 2, 3, 4.

I finde further in the ſaid Booke of the diſcouery of Witches, that two children, the one about nine yeares of age, the other of foureteene, did vpon their oathes giue euidence againſt the priſoners vpon their arraignment. See the Booke *f.* 4. *I. 1. b. K.* 4. *ab.* *By an Infant.*

Accuſation by an approuer. See hereof *tit. Bailement.*

Two informe againſt another in matter of felony, and they vary in their Tales, (*viz.* in the day and place; when and where the felony was committed) ſuch information is not much to bee credited: See the ſtory of *Suſanna.* *By perſons diſcredited.*

Hee that is examined, if part of that he ſpeaketh be proued to be falſe, he is not to be credited in the reſidue of his Information; And therefore wee ſhall finde in 16. *Ed.* 4. That a man who was produced as a witneſſe in the Chancery, in his depoſition he was found to ſweare falſely in part, and thereupon his teſtimony was vtterly reiected.

Cromp. 120.

A man attainted of Periurie, and the King pardons and reſtores him, &c. *quære* whether ſuch a perſons information ſhall be allowed againſt a priſoner; for the olde ſaying is, once forſworne, euer forlorne.

A man attainted of conſpiracy or forgery, ſhal not be receiued to giue euidence, or to be a witneſſe. See *Cromp.* 127. *b.*

But

But if one be brought before a Iuſtice vpon ſuſpition of felony, although the information againſt the priſoner ſhalbe by ſuch witneſſes, yet it ſeemeth ſafeſt for the Iuſtice of peace to take their information for the King, and to binde them ouer to giue euidence, &c. and to commit the partie ſuſpected. And vpon the triall to informe the Iuſtices of gaole deliuery, concerning the credit of thoſe witneſſes.

When a priſoner ſhall be brought before the Iuſtice of peace, for felony, or ſuſpition thereof, but they that bring him, will not, or cannot informe any materiall thing againſt the priſoner, yet it ſeemeth the Iuſt. of peace ought to commit the partie ſuſpected (after his examination taken) and to binde ouer ſuch as did firſt accuſe the priſoner, or ſuch as doe bring him before the Iuſtice, to giue in euidence, &c. And if after the ſaid Iuſtice ſhall heare of any other perſons that can informe any materiall thing againſt the priſoner (to proue the felony whereof he is ſuſpected) the ſaid Iuſtice may grant out his Warrant for ſuch perſons to come before him, and may alſo take their Information, &c. and may binde them to giue in euidence againſt the priſoner: For euery one ſhalbe admitted to giue euidence for the King. *Stamf.* 163. See *antea tit. Felony bis.*

And it ſeemeth fit, that the parties grieued, bee bound not onely to giue in euidence, but alſo to preferre a bill of inditement againſt the priſoner: and the other perſons may bee bound to giue in euidence onely.

And for that men ſhould bee the readier and more willing to giue euidence againſt felons, The Statute made 21. *H.* 8. *cap.* 11. hath enacted, that if any man hath any goods ſtollen from him, if the felon be thereof indited, and after in any ſort attainted, or found guiltie, by reaſon of euidence giuen by the partie robbed, or by any other by his procurement, Then the partie robbed, (or owner of the goods) ſhall be reſtored to his ſaid goods; though he neuer made any freſh ſuite: Before which ſtatute the partie robbed could haue no reſtitution, without ſuiug of an Appeale againſt the felon, and freſh ſuite made. P. Reſtitutió. 1. Reſtitution. Stam. 165. 166.

Alſo the Executors of the partie robbed, ſhall haue Reſtitution by force of this ſtatute, *viz.* vpon euidence giuen by them, or by their procurement againſt the felon, whereby the felon is attainted, or found guiltie. Co. 6. 80. Benl. 3. Eliz.

If a thiefe doe robbe or ſteale goods from three men ſeuerally, and hee bee indited of the robbing or ſtealing from one of them, and arraigned thereupon, in this caſe though the other two would giue euidence againſt the offendor, yet ſhall not they

haue Reſtitution of their goods, by the meaning of that ſtatute;
Stamf. 66. P.R.162. for the Felon is not attainted of any other felony, ſauing of that whereof hee was indited: But if hee bee indited of all their three Robberies or Felonies ſeuerally, and arraigned vpon one of them, and found guiltie by the Euidence giuen by one of the parties robbed, &c. Yet ſhall hee bee after arraigned vpon the other two inditements, to the intent he alſo may be found guiltie, by the euidence of the other two perſons robbed, and that ſo they may haue reſtitution of their goods ſtollen, according to the the meaning of the ſaid ſtatute.

And if a man doe ſteale goods at diuers times from ſeuerall men, and hee is after attainted at the ſuite of one or them onely,
44.Ed.3.44. for the goods ſtollen from him; but is not attainted at the ſuit of the others; by this attainder the felon ſhall forfeit to the King not onely his owne goods, but alſo the goods ſtollen from thoſe other, at whoſe ſuite hee was not attainted, though the felon had no propertie, but onely a poſſeſſion of thoſe goods; And the property of the goods which remaineth in the right owner in this caſe is forfeited (by the owner) to the King, for default of the owners purſuing the felon.

See Stam. 166. Alſo if there be diuers of the theeues, and but one of the principals attainted (as before) yet it ſeemeth the partie robbed ſhall haue Reſtitution.

But in theſe and the like caſes of Reſtitution, if the felon hath ſolde the goods in a Faire, or Market ouert, and after be attainted of the felonie (vpon euidence giuen by the partie robbed.) Here the owner ſhall not haue Reſtitution; For by Alienation in Faire or Market ouert the propertie of goods ſtollen, are altered, 12. *H.*8.10.*b.* Yet if he that bought the goods (ſtollen) in market were priuy to the felony, ſuch ſale ſhall not alter the propertie, *quia particeps criminis:* See 33.*H.*6.7. *Co.*3.78. *Vide antea tit. Horſes.*

A man ſhall haue reſtitution of money ſtollen, &c. though it cannot be knowne. *Br. Reſtit.*22.

But if a man hath a horſe or goods ſtollen from him, & knoweth not by whom, or if he knoweth the felon, yet if the felon waiueth the good, flieth, and eſcapeth, and the Lord of the Mannor, &c. ſeiſeth them, the partie robbed ſhall haue no reſtitution, for that hee cannot indite or attaint the felon: And yet if the felon had not the goods in his poſſeſſion, and with him at the time when he fled (but had left them elſewhere) then are they no waiued goods nor forfeite, but that the owner may take them againe whereſoeuer hee findeth them, without any reſtitution awarded, as it ſeemeth. *Co.*5.109.

Alſo.

Also, in the aforesaid Booke of Discouery of Witches, I obserue one other thing, *viz.*

Examination certified. That Examinations taken by iustices of peace in one County, may be (by them) certified into another Countie, and there read and giuen in euidence against the prisoner. Y.2.3.

Vpon oath. The offendor himselfe shall not bee examined vpon oath, for by the Common Law, *Nullus tenetur seipsum prodere*; Neither was a mans fault to be wrung out of himselfe (no not by examination onely) but to be proued by others, vntill the statute of 2. & 3. *P. & M. cap.* 10. gaue authoritie to the Iustices of peace, to examine the felon himselfe.

But it seemeth conuenient, in cases of Felony, especially, that the information (of the bringers, and others) which the Iustice of peace doe take against the prisoner, bee vpon Oath; otherwise vpon the triall of the prisoner, such Information, or examination, taken by the Iustice of peace, shall not bee read or deliuered to the Iury, nor giuen in euidence against the prisoner vpon his triall: And so was the direction of Sir *Edward Coke*, late Lord Chiefe Iustice (5. *Iacobi* at Cambridge Sommer Assises) vpon the triall of a felon; For (said he) in case of trespasse to the value of two pence, no Euidence shall bee giuen to the Iurie, but vpon oath, much lesse where the life of a man is in question. See *Lambert. pag.* 210. that he hath heard the opinions of other Iust. of Assise deliuered accordingly.

Also if the Informers bee examined vpon oath, then though it happen they should die before the prisoner haue his trial, yet may their information be giuen in euidēce, as a matter of good credit.

Also it is found by experience, that without oath, many Informers will speake coldly against a felon before the face of the Iust. of peace; yea and wil also speake very sparingly and coldly, vpon their euidence giuen before the Iudges of assise, as I haue obserued in some, had they not been vrged with their former information taken vpon oath: For the labouring (by the offendor and his friends) to such as are to informe and giue euidence (both before the matter commeth before the Iustice of peace, and after) is now growen ouer common and vsuall.

Also Master *Brooke*, (*tit. Examination* 32.) is of opinion, that euery examination ought to bee vpon oath; And so also is the practise of the Iustices in the higher Courts at Westminster, in all their examinations of Summoners, Viewers, Sheriffes, Clerkes, and other Officers, &c. Lamb. 219.

And here let me admonish all such as are to informe or beare witnesse against a prisoner, or any offendor, before a Iustice of Peace,

Peace, or other Magiſtrate, That they be well aduiſed what they teſtifie vpon their oathes, knowing that in ſuch caſes, if either they ſhould not ſpeake the truth, or ſhal conceale any part of the truth they ſhould offend againſt God, the Magiſtrate, the innocent, the Common wealth, and their owne ſoules; *ſc.* againſt

God, in deſpiſing of him, and belying the truth.

Magiſtrate, in deceiuing of him, & cauſing him to doe iniuſtice.

Innocent, in ſpoyling him of his name, goods, or life.

Common wealth, *ſc.* if the partie be nocent, or guiltie, and hee cleeres him by falſe witneſſe.

His owne ſoule, for it is periurie in him (at leaſt, in the preſence of God, and good men.)

Whether Information, Euidence, or proofe of Witneſſes ſhall be taken againſt the King.

IT ſeemeth iuſt and right that the Iuſtice of P. who taketh information againſt a felon, or perſon ſuſpected of felonie, ſhould take and certifie, as well ſuch information, proofe, and euidence, as goeth to the acquitall or cleering of the priſoner, as ſuch as makes for the K. and againſt the priſoner; for ſuch information, euidence or proofe taken, and the certifying thereof by the Iuſtice of peace, is onely to informe the King and his Iuſtices of Gaole deliuerie, &c. of the truth of the matter.

And Sir *Edw. Coke* (at lent Aſſiſes at Bury *quinto Iacobi*) aduiſed a Coroner that he ought to haue done accordingly, (as I haue heard.)

But *quære* if the Iuſtice of peace, or Coroner, may take vpon oath ſuch information, euidence or proofe, as maketh againſt the King: it ſeemeth no.

Vpon triall of Felons before the Iuſtices of Gaole deliuery, the
Cromp. 110. b. ſaid Iuſtices will often heare witneſſes and euidence which goeth to the cleering and acquitall of the priſoner, yet they will not take it vpon oath; but doe leaue ſuch teſtimonie and euidence to the Iurie, to giue credite, or to thinke thereof as they ſhall ſee and finde cauſe.

Popham chiefe Iuſtice (at Cambridge Aſſiſes *tempore Eliz.*) cõmitted one to priſon, who, vpon the tryall of a felon, called out that he could giue euidence for the Queene, and when he was ſworne, he gaue euidence to acquite the offendor.

But by the Stat. 31. *Eliz. cap.* 4. it was enacted, that ſuch perſons
P Armor. 3. as ſhall be impeached for any offence made felonie by that Statute (being againſt imbeſilling of armor, &c.) ſhalbe admitted to make any lawfull proofe that they can, by witneſſe or other-

wiſe, for their diſcharge and defence.

In 7. *H.* 4. we ſhall finde that one of the Serieants as *Amicus Curiæ*, and to informe the Court (that they ſhould not erre) did ſhew his opinion to the benefite of a priſoner, vpon the inſufficiencie of the Indictment: the like is to be ſeene in *Brookes* caſe, 28. *Eliz.* in *Banco Regis*. Stamf. 151. b. Co. 4. 39. b. Co. 4. 39.

Now vpon the examination of Felons, & other like offendors, theſe circumſtances following, are to be conſidered:

1 His Name; *ſc.* if he be not called by diuerſe names.

2 Quality
- His parents, if they were wicked, and giuen to the ſame kind of fault.
- His abilitie of body; *ſc.* if ſtrong & ſwift, or weake or ſickly not like to doe the Act.
- His nature; if ciuill or haſtie, wittie and ſubtill, a quarreller, pilferer, or bloudie minded, &c.
- His meanes; if he hath whereon to liue, or not.
- His trade; for if a man liueth idly or vagarant *(nullam exercens artem nec laborem)* it is a good cauſe to arreſt him vpon ſuſpition, if there haue beene any felony committed.
- His companie; if Ruffians, ſuſpected perſons, or his being in companie with any the offendors.
- His courſe of life; *ſc.* if a common Alehouſe-hanter, or ryottous in dyet, play, or apparrell.
- Whether he be of euill fame, or report.
- Whether hee hath committed the like offence before; or if he hath had a pardon, or beene acquited, for felonie before; *Nam qui ſemel eſt malus, ſemper preſumitur eſſe malus in eodem genere mali.*

3 Markes or Signes.
- If he hath any bloud about him.
- If any of the goods ſtollen, be in his poſſeſſion.
- The change of his countenance, his bluſhing, looking downewards, ſilence, trembling.
- His anſwers doubtfull, or repugnant.
- If he offered agrement or compoſition.
- The meaſure of his foote, or horſe foote.
- The bleeding of the dead bodie in his preſence.
- If, being charged with the felony, or called theefe, he ſaith nothing, *f. Cor.* 24.
- If he bleede; *fatetur facinus, qui Iudicium fugit.*

- Place; *ſc.* if conuenient for ſuch act, as in a houſe, in a wood, Dale, &c.
- Time;

4 The fact { Time; the yeare, day, houre; early or late.
Where the offendor was at the time of the fact, and where the day or night before, his busineſſe, and companie there, and witneſſe to proue all theſe.
Manner; if willingly, by chance, or neceſſitie.

5 The cauſe. { If former malice.
If to his benefite, or what hope of gaine.
If for the eſchuing of any hurt, or danger.

6 The perſons. { *Agens*; if Principall or Acceſſarie, Enfant, Lunatique, &c.
Patiens; if againſt the King, Common-wealth, Magiſtrate, Mr. &c.

A felon brought before a Iuſtice of peace accuſeth others, it is ſufficient cauſe for the Iuſt. to graunt out his Warrant for the reſt. *Vide pag. 276.*

A man going to execution, accuſeth another of felony, it is ſufficient cauſe to arreſt him. [Coron. 211.

Communis vox et fama, that he did the offence is ſufficient cauſe of ſuſpition. *Fama.*

But yet for the better conceiuing what may breede or giue iuſt cauſe of ſuſpition, marke ſome of Maſter *Bracton's* Rules.

Stamf. 97. *Oritur ſuſpitio ex fama; Fama vero quæ ſuſpitionem inducit, oriri debet apud bonos et graues, (non quidem maleuolos et maledicos, ſed prouidas et fide dignas perſonas) idq; non ſemel, ſed ſæpius: vane autem voces populi non ſunt audiendæ.* And therefore where the common prouerbe is, *populi eſt vox Dei*, it ſhould be, *vox populi Dei eſt vox Dei.*

Stamf. 29. *Si furtum in manu alicuius inueniatur, vel ſub poteſtate alicuius, tunc ille in cuius domo vel poteſtate res furtiua inuenta fuerit, tenebitur, (niſi Warrantum inuenerit, qui eum inde defendere poſſit;)* for as another ſaith, *Cum adſunt teſtimonia rerum, quid opus eſt verbis.*

Stamf. 197. *Si quis noctu cubauerit in domo ſolus cum aliquo qui interfectus ſit, vel ſi duo aut plures ibi fuere, et hutesium non leuauere, nec plagam a latronibus vel interfectoribus in defenſione facienda accipere, nec oſtendunt quis de ſe vel de alijs hominem interfecerit, his caſibus mortem dedicere non poſſunt.*

Ibidem. *Si quis in domum ſuam notum vel ignotum acceperit qui vinus ingredi viſus eſt, vero poſtea nunquam niſi mortuus, Dominus domus ſi tunc domi ſit, vel alij de familia qui tunc interfuerunt pœnam capitalem ſubibunt, niſi forte per patriam fuerint liberati.*

Stamf. 97, & 197. *Sunt etiam quædam præſumptiones ita violentæ, vt probationē non admittunt in contrarium; vt ſi quis cum cultello cruentato captus ſit*

ſuper mortuum, vel fugiendo a mortuo, vel mortem confitetur; quibus caſibus non admittitur mortem dedicere, nec alia opus eſt probatione.

And yet the confeſſion of the offendor, vpon his examination before the Iuſtice of Peace ſhall be no conuiction of the offendor, except he ſhall after confeſſe the ſame againe vpon his tryall or arraignement, or be found guiltie by verdict of twelue men, &c.

Alſo in caſes of ſecret murthers, and in caſes of poyſoning, witchcraft, and the like ſecret offences, where open and euident proofes are ſeldome to be had, there (it ſeemeth) halfe proofes are to be allowed, and are good cauſes of ſuſpition.

Note (by the Common Law) that in an action of falſe impriſonment brought againſt the Conſtable (or other perſon that ſhall arreſt another vpon ſuſpition of felonie) it is no plea for them to ſay that the plaintiffe was ſuſpected of felonie, but hee muſt alledge that there was a felonie committed, and that the plaintiffe was ſuſpected for the ſame; for ſuſpition only without a felonie committed, is no cauſe to arreſt another. 8.E.4.4. 5.H.7.4

Alſo the Defendant muſt alledge ſome ſpecial matter (in fact) to proue that he who was arreſted, was ſuſpected of felony (as to ſay, that the partie arreſted, is a man of euill fame, &c.) otherwiſe euerie man may arreſt one another. 17.E.4.5. 21.H.7.29.

Alſo the defendant muſt plead that he himſelfe had a ſuſpition of the plaintiffe: for if the Conſtable (or other perſon that ſhall arreſt one that is ſuſpected) doth not ſuſpect him himſelfe, it ſeemeth he may not arreſt him, vpon his owne authoritie. 7.E.4.29.

But now by the ſtatute 7. *Iac.* 5. The Conſtable, &c. in the former caſes, may plead the generall iſſue (Not guiltie) and giue the ſaid ſpeciall matters in euidence.

Alſo if the Conſtable or other perſon, ſhal arreſt another vpon ſuſpition of felonie, by vertue of a Warrant from a Iuſtice of P. ſuch Warrant ſhall excuſe him, it being giuen in euidence, &c. *Vide poſtea tit. Warrants.*

Baylement and Mainprise.

BAylement, Mainprise, or Repleuin, is the sauing, or delluerie of a man, out of prison, before that he hath satisfied the Law, *sc.* by finding suerties to answer, and be iustified by the Law.

And to this purpose these three termes (Baylment, Mainprise, and Repleuin) be indifferently vsed in our Statutes and bookes.

He that is bayled, is taken or kept out of prison, and deliuered (as it were) into the hands of his suerties, who are reputed his Gardeins, and who may keepe him with them, and may imprison him by some opinions. See 22. *H.* 6. *Br. Suerty.* 8.

Stamf. 69.

If the Mainpernors or suerties, do at any time doubt that their prisoner, or the party by them bayled, will flie, they may take him and bring him before any Iustice of peace, and vpon their prayer the said Iustice of Peace may and ought to discharge such suerties, and to commit the partie to prison, except he shall finde new suerties, &c.

Cromp. 157.

So if a prisoner be bayled by insufficient persons, the Iustice of Peace *(ex officio)* may cause him to finde better suerties, and may commit him (as it seemeth) till he shall so doe; for the Statute of Westm. 1. *cap.* 15. requireth that such as be bayled, be let out by sufficient suerties. *P. Mainp.* 2. *Vide ant. tit. Suertie for the Peace.*

And although the number of such suerties, their sufficiencie, and the summe wherin they shal be bound, resteth (in some sort) in the discretion of the Iustices, yet it is safe for them, to take two suerties (at the least) and those to be Subsedie men, especially if the prisoner be in for felonie, or suspition thereof; for at Cambridge Assises *Anno Dom.* 1613. Iudge *Warberton* threatned to haue set fortie pound fine vpon two Iustices of Peace, who had bayled a prisoner (that was committed for suspition of felony and appeared not) for that the suerties were not Subsedy men.

Quære, if the Iustices of P. may not examine vpon their oathes, the suerties concerning their sufficiency, or whether they be Subsedie men. *vide pag.* 142.

Now Baylement, by the Iuſtices of Peace (in caſe of felony, or for any other matter) is alwayes vpon a certaine ſumme of mony (as vpon fortie pound, &c.) the which ſumme the ſuerties, &c. ſhall forfeit to the King, if the priſoner appeareth not at his day. Stamf. 77. 21.H.7.20.

Alſo the Baylement in felonie, is, *Ad Standum rectum de latrocinio prædicto ſecundũ legem, &c.* which ſeemeth to imply that they which haue taken him to bayle, ſhall not onely cauſe him to appeare, but alſo to anſwer to the felony. *Stamf.* 77.d.

And in this buſineſſe of **Baylement** (being a matter of much weight) it behoueth the Iuſtices of Peace to be very circumſpect, as well for feare of wrong, by denying it to him that is bayleable, as alſo for feare of danger to the ſeruice it ſelfe, by yeelding it where it is not grantable, and for feare of danger to themſelues in both caſes:

For whoſoeuer doe detaine priſoners who are bayleable, after they haue offered ſufficient ſuerties, ſhalbe grieuouſly amerced to the king; and he that doth take any reward for the deliuerance of ſuch, ſhall bee amerced to the King, and pay double to the priſoner. 3.E.1.15. P.Mainp.6. See 23.H.7. cap.10. P.Sher 8,11.

So on the other ſide, if one who by the Law, is not bayleable, ſhall be let to Mainpriſe; this ſhalbe adiudged a negligent eſcape in him or them that doe let him to Mainpriſe: and for ſuch an eſcape or offence they ſhall be fined, and puniſhed as followeth; 25.E.3.fo.39. Stamf.33,77.

If the Sheriffe, Conſtable, or any Bayliffe of Fee who hath the keeping of Priſoners, ſhall bayle any perſon which is not bayleable, and be thereof attainted, they ſhall looſe their fee and office for euer; and if the Vnderſheriffe, Conſtable, or Bayliffe of ſuch as haue fee for keeping of priſoners, doe it contrarie to their Maſters will; or any other Bayliffe being not of Fee, they ſhall haue three yeares impriſonment, and make fine at the Kings pleaſure. 3.E.1.15. P.Mainp 3,4.

Note, that the Sheriffes, and other officers which do let to baile any perſons forbidden (by the Statute 3.*Ed.*1.*cap.*15.) to be bayled ſhall be puniſhed by the Iuſtices of Gaole deliuerie, according to the forme of the ſame Statute, or elſe by the ſaid Iuſtices they may be put to their fine, as for an eſcape puniſhable at the Common Law. 25.*Ed.*3.39. 27.E.3. P.Mainp 4.

Note alſo, that the Sheriffe or Conſtable might at the common Law haue bayled a ſuſpect of felony (becauſe they were conſeruators of the Peace) but now that power ſeemeth to be transferred to the Iuſtices of Peace onely.

By the Iuſtices. If any Iuſtices of peace doe let to bayle or mainpriſe any perſon, who (for any offence by him committed) is declared not to be

1.& 2.P.& M. cap.13. P. { Iuſt.107. Mainp 4.

be bayleable, or forbidden to be bayled by the aforeſaid Statute of 3.*Ed.*1.the ſaid Iuſtices of Peace ſo offending ſhall pay ſuch fines,as ſhall be aſſeſſed by the Iuſtices of Gaole deliuerie where the offence ſhall be committed.

1.& 2.P.& M.

But the Iuſtices of Peace and Coroners, within London and Middleſex,and in all other Cities, Boroughes, and Townes corporate haue authority to let to baile felons,and priſoners,as they haue formerly accuſtomed. *P.Iuſt.*107.

See Co.10. 100.b.

If the Sheriffe,Iuſtice of Peace, or other officer, ſhall bayle one that is not bayleable, ſuch baylement being againſt Law, *quare* if the Recogniſance or bond taken vpon ſuch baylement (for the apparance of the priſoner) be not voyd. See the opinion of *Moile* 37.*H.6.*1.and of the Court there, that ſuch a Bond taken by the Sheriffe is void.

Now to ſhew further the authoritie of the Iuſtices of Peace, in this behalfe;

1.& 2.P.& M. cap.13. P.Mainp 107.

The manner.

No perſon arreſted for manſlaughter or felonie, or ſuſpition thereof(being bayleable by the Law)ſhalbe let to bayle or mainpriſe,by any Iuſtice of Peace,but in open Seſſions, or by two Iuſtices of Peace at the leaſt, whereof one to be of the *Quorum*,and the ſame Iuſtices to be preſent together, at the time of the ſaide baylement:

Ibid.

And this baylement the ſaid Iuſtices ſhall certifie in writing (ſubſcribed with their hands) at the next generall Gaole deliuery &c.*Vide antea tit. Examination of Felons.*

Ibidem.

Alſo before the baylement of ſuch priſoner, the ſame Iuſtices, or one of them,ſhal take the examination of the priſoner,and information of them that bring him, of the fact and circumſtances thereof,and ſo much thereof as ſhall be materiall to proue the felonie,ſhal put in writing,before they make the bailement: which examination,information and baylement,they ſhal certifie at the next generall Gaole deliuerie,*vt ſupra.*

But if any Iuſtice of Peace hath taken the examination of a felon,and information againſt him, and after hath ſent him to the Gaole; now vpon baylement of him by other Iuſtices,they need not to take any new examination of the priſoner,or information againſt him,but vnder their Recogn. (or together therewith) to certifie by what Iuſtice of Peace the felon was committed,to the end that at his hands thoſe examinations and informations may be required,if he haue not certified them.

Cromp.156.

By the opinion of Maſter *Crompton*, a priſoner (taken for felony) before his commitment, ought to be examined and bayled by two Iuſtices of Peace, being together (as before); but after that

that the prisoner is examined and once committed, then he may be bayled by any one Iustice of P. *quære* thereof.

Mittimus the forme,

The Iustices of Peace which shall send any prisoner to the Gaole, ought to shew in their *Mittimus* the cause of the commitment, to the end it may appeare whether such prisoner be bayleable, or no.

Cromp. 153. And if the Iustices of P. shall commit one to the Gaole, with these words in the *Mittimus*, *sc.* without Bayle or Mainprise (shewing a certaine cause in their *Mittimus*) yet if such a prisoner be bayleable by law, other Iustices of P. may bayle him; yet *quære*, seeing their authoritie is equall: but if the prisoner were committed without baile or mainprise, and without shewing cause in the *Mittimus*, then other Iustices of peace cannot (or at least shall not do wel) to bayle him, without making the other Iust. which committed him, priuie thereto; for hee might be committed for such cause, as that he is not bayleable (as for Treason, &c.)

See pag seq.

14.H.7.10.2. Note, where a man is bayleable, yet when he commeth before the Iustice, he must offer suerty to the Iustices, otherwise they may commit him to prison. *Br. Peace.* 7.

Next it followeth that I shew what persons be bayleable, and what not:

Persons not bayleable.

P. Mainp 1. Stamf. 72. It appeareth by the Stat. of West. 1. *cap.* 15. that in these foure cases following, a man was not bayleable at the Common Law. *Br. Mainp.* 47.

Br. Mainp. 47, 63, 78. 1. First, no person taken for the death of a man, *sc.* for murder, or any other homicide, was bayleable by the Common Law;

f. Coron. 361. And yet the Iustices of the Kings Bench doe vse to bayle them, yea although it be for murder.

P. Iust. 107. Lamb. 336. Also the Statute 1. *et* 2. *P. et M. cap.* 13. seemeth to admit that for manslaughter, and all other Homicides (except murder only) the slayer may be bayled by the Iustices of peace, which also I take to be the common practise at this day: but let the Iustices of peace be sparing and well aduised hererein, *viz.* that the offence be but manslaughter, and not murder.

Also it seemeth the Iustices of P. cannot bayle him that hath committed manslaughter; if eyther he hath confessed the offence vpon his examination, *vide postea tit. Baylement.*

Or that he be taken with the manner;

Or that it be apparantly knowne that he killed the other. *Vide pag. seq.*

He that hath dangerously hurt another may goe vnder bayle, &c. *vide pag.* 28.

2 Secondly, no person taken by the Kings commandement, was

was bayleable by the Common Law, but this muſt be intended of the Kings commaundement by his owne mouth, or by his Priuie Councell, which are incorporate to him.) See *Stamf.* 72.e. *Br. Mainp.* 37, 47.

Stamf. 73. 3 Thirdly, no perſon taken by the commaundement of the Kings Iuſtices, was bayleable by the Cõmon Law: but this muſt be intended of their abſolute commaundement; as if the Iuſtice commands one to priſon, without ſhewing cauſe why he doth ſo command, or for miſdemeanor done in his preſence, or for ſome other cauſe which lieth in the diſcretion of the Iuſtice (more then in his ordinarie power, &c.)

See pag. p̃ced.

4 Fourthly, Treſpaſſers in the Foreſt, were not bayleable by the Cõmon Law: but that was remedied by the Statutes. 1. *Ed.* 3. *cap.* 8. and 7. *R.* 2. *cap.* 4.

P. Iuſt. 107. But now for that by the ſtatute 1. *et* 2. *P. et M. cap.* 13. it is prouided that no Iuſtice, or Iuſtices of P. ſhall let to bayle any perſon contrarie to the foreſaid ſtatute of Weſtminſter 1. (made 3 *Ed.* 1.) *cap.* 15. And ſo the ſaid ſtatute of Weſtm. 1. is now as a line whereby the Iuſtices are to guide themſelues in caſe of Baylement; I wil ſhew here what perſons are bayleable by that ſtat. of Weſt. 1. and what not. *By Statute.*

3. Ed 1. 15. P. Mainp. 1. By this Statute of Weſtminſter 1. no priſoner ſhall be let to bayle, which is taken in any of theſe twelue Caſes following;

1 Such as haue abiured the Realme, ſhall not be bayled.

Stamf. 144. b. Lambt. 337. 2 Nor any approuer or appellor (for that he confeſſeth the felonie, and himſelfe guiltie, before he can burthen or accuſe another, as coadiutor or helper with him in doing the ſame.)

Fitz. 250. d. 3 Nor he which is appealed by an Approuer, ſo long as the Approuer doth liue, except he be of good name; or that the Approuer doth wayue his appeale. See *Stamf.* 74.

4 Nor he which is taken for burning of a houſe &c. felonioufly. *Vide antea Felonie by the Common Law.*

5 Nor any excõmunicate perſon, taken at the Biſh. requeſt.

6 Nor any felon taken with the manner, or taken for a manifeſt offence.

7 Nor a theefe openly defamed, and knowen.

8 Nor he which is outlawed: and yet in ſome caſes ſuch as be outlawed, may be bayled, by the Court, &c. See *Stamf.* 74.

9 Nor he which hath broken the Kings priſon. *Vide antea tit. Felonie by Statute.*

10 Nor he which is taken for Treaſon, touching the King himſelfe.

11 Nor

11 Nor he which is taken for falsifying the Kings money.

12 Nor he which counterfeiteth the Kings seale.

Persons bayleable. But by the same Statute of Westm. 1. such persons are bayleable, which be taken in any of these sixe Cases following. Westm 1. 15.

1. Persons suspect. First, he that is taken (or indicted) for light suspition of felony, is bayleable. See *Lambt.* 335. *f.N.Br.* 249.

He that is taken vpon suspition, of Burglarie, robbery, or theft, if he be not of euill fame, nor that there be any strong presumption against him, it seemeth he is bayleable. Stamf. 74.c.

A man had stollen certaine Hogges, and (for that he was of euill fame) hee was committed without bayle; yet if he could haue brought proofe or witnesse that he bought them, he should haue beene bayled. 16.E.4.5. Br.Mainp.

A man is arrested for suspition, and brought before the Iustice, it it shall appeare that there is no such felonie committed, the partie may be set at libertie without bayle: But if there be a felonie committed, though the prisoner can cleere himselfe, yet the Iustice must eyther commit him, or bayle him. *Vide antea tit. Felonie by Statute.* Cromp. 154.

2. Petie Larcenie. Secondly, he that is taken or indicted for petie Larcenie (that amounteth not aboue the value of xij.d.) if he were not guiltie of some Larcenie before, he is bayleable. P.Mainp 2. Fitz. 250.c.

3. Persons indicted. Thirdly, such as be indicted of Larcenie (generally, as it seemeth) they shall be set at libertie vpon sufficient suertie: P.Mainp 2.

And yet they shall not be bayled, if they be not also of good fame; but if they be of good fame they are to be bayled, althogh they be indicted (before Sheriffes, Bayliffes, or before any other Iustices that haue authoritie to heare and determine felonie) yet *quære*, if the Iustices of Peace out of their Sessions may bayle such persons, for being indicted, they are more then vehemently suspected, &c. *vide pag. sequent.* Stamf. 74. Fitz. 249, & 250.c.

Persons attaint. But such as are attainted (or cõduicted) of felony, are not bayleable; for although it dooth not appeare by anie wordes of the said Statute of Westminst. 1. that it doth prohibite the baylement of such as be attainted by verdict, yet it is to be intended that the Statute doth as well prohibite the baylement of those attainted by verdict, as it doth them who be attainted by Outlawrie: and therefore if a prisoner after hee hath pleaded Not guiltie, be attainted by verdict, that he killed a man *Se defendendo*, or by misfortune, yet he shall not be bayled: *Quære, et vide antea tit. Felonies by Casualtie, & Stamf.* 15.c. Stanf. 74 d. f.Coron. 297, 354. 25.E.3.42.

Persons conuict. And if a man that is arraigned of Homicide, doth pleade Not guilty, and is found guiltie, and doth pray his Clergie, and is repried Dyer. 179.

See Br. Mainp. 94. pried without iudgement, hee is not bayleable; for being conuicted of the felonie, he is more now then vehemently suspected: and the intendment of law in cases of baylement, is, that it resteth indifferent whether he be guilty or not, vntill tryall, &c.

The same reason seemeth to hold, if a man be found guiltie of homicide, before the Coroner.

P. Mainp. 2. Stamf. 71. 4 Those that be charged with the receipt of theeues, or felons; or of commaundement, or force, or of ayde (in felonie done) be bayleable. 4. *Accessaries.*

And it seemeth that abbettors, consenters, & procurers, & all other accessaries to felonies, are within the equity of this Stat. and are bayleable: yea, accessaries (aswell in case of the death of a man, as in case of other felonies) are bayleable, if they be of good fame, vntill the principal be conuict or attaint; but after the principall is attainted, the accessarie shall not be bayled, but kept in prison: and yet if (after the attainder of the principall) the accessarie shall pleade Not guiltie, or other plea, it seemeth hee shall be bayled.

Stamf. 71. c. Fitz. 250. c.

40. E. 3. fol. 28. Stamf. 71. c. Br. Mainp. 58.

Stamf. 71. f. Coron. 200. If a man bee accessarie to two, and the one principall is attainted, though the other be not yet, the accessarie shall not bee bayled.

Stamf. 74. Also the said Stat. of Westm. 1. *cap.* 15. doth no more restraine the principalls (to be bayled) then the accessaries, in those cases where the same Statute doth not prohibite to let to Mainprise; and therefore if a man be indicted of Burglarie as principall, yet he may be bayled, *Stamf.* 74. *Br.* 56. *Principalls.*

f. Mainp. 9.

Stamf. 74. Also the Principall in an appell of Robberie, may be bayled; And so may he be bayled, vpon an Indictment of robberie. *Br.* 61.

But the principall in the death of a man, is not bayleable, eyther by the Common Law, or by the Statute of Westm. 1. yet see hereof before in this title; that the Iustices of the Kings Bench, do vse to bayle them. Also see there for what homicides the Iustices of Peace may bayle one that is a principall.

Stamf. 71. Br. 56, 58.

Westm 1. 15. P. Mainp 2. 5 Fift; Those that be charged with (or guiltie of) any Trespasse, that toucheth not losse of life, nor member, be bayleable by the Statute of Westm. 1. 15. But yet let the Iustice of Peace haue a care that bayle be not prohibited, by any other later Stat. (in such cases of Trespasse. 5. *Trespasse.*

Fitz. 250. g. Lamb. 337. If any person be committed to prison, by Processe from the Sessions made vpon an Indictment vpon any penall Statute (not prohibiting bayle) he may be bayled (out of the Sessions) by two Iustices of peace, the one being of the *Quorum*:

Or

Or he may haue a Writ out of the Chancerie (directed to the Iuſtices of Peace, or to the Sheriffe) to take ſuertie of him for his apparance, before the Iuſtices at their Seſſions, &c. Or hee may haue a *Certiorari* to remoue the Record into the Kings Bench, and a *Habeas Corpus* to remoue the bodie thither alſo. *Fitzh.* 250. g.h.i. & 251.c.

If Proceſſe from the Seſſions, ſhall goe forth vpon an Indictment of Treſpaſſe, &c. it ſeemeth that any one Iuſtice of Peace may take bayle of the partie, to appeare at the day &c. to anſwere to the Indictment; and the ſame Iuſtice may thereupon make his *Superſedeas de cap. indict at.* (and ſo of the Exigent,) for otherwiſe beſides the miſchiefe of impriſonment, the partie may be Outlawed before the Seſſions. See ſome Preſidents therein, *poſtea tit. Preſidents.* Cromp. 197, 234.

Note, that the Iuſtices of Peace are not to bayle any priſoner, except the priſoner be committed for ſuch cauſe, wherof the ſaid Iuſtices of peace be competent Iudges, *ſc.* ſuch cauſes as they may heare and determine.

And therefore if a man be taken vpon Proces of Rebellion, iſſuing out of the Chancerie, or Starre-Chamber, the Iuſtices of P. are not to bayle them: And Mr. *Crompton* reporteth of two Iuſtices of Peace, who were fined for bayling one in ſuch a caſe. Lambt. 337. Cromp. 132.

If a man be arreſted by force of any Proceſſe, Writ, Bill, or Warrant, in any Action perſonall, the Iuſtices are not to bayle him. See here 278. Execution.

6 Sixtly; he that is appealed by an *Approuer*, (being no common theefe, nor defamed) after the death of the Approuer, is bayleable by the ſaid Statute of Weſtm. 1. P. Mainp. 2. Fitz. 250. d.

Note, that a man cannot become an Approuer, before Iuſtices of Peace: neuertheleſſe it ſeemeth both reaſonable and ſeruiceable, that if a felon will become an Approuer, that is, will confeſſe his felonie, and alſo accuſe others (that were coadiutors with him in doing the ſame felonie, or in other felonies) before a Iuſtice of Peace, that ſuch Iuſtice may take his confeſſion, and commit him to the Gaole, and may alſo grant out his Warrants for the apprehending of the others that are ſo accuſed. Stamf. 144. a.

Where Baylement is taken away by Statute.

NO perſon (being impriſoned or taken for any of the offences or cauſes hereunder mentioned) ſhall bee bayled or let to Mainpriſe, *ſc.*

Such as haue abiured the Realme, *vide* 273.

Accomptants

Accomptants found in Arrerages before Auditors. 13. *Edw.* 1. 11. *Where Bayle is taken away*

Alehouſekeeper without Licence. *Vide antea tit. Alehouſes.*

Alehouſekeeper prohibited by two Iuſtices of peace, and notwithſtanding continueth his ſelling, &c.

1 Alehouſekeepers, Inhekeepers, and Victuallers, which ſhall ſuffer towneſmen to continue drinking in their houſes, contrary to the Statute.

2 Or ſhall ſell leſſe then one full ale quart of their beſt Beere or Ale for a peny, and of the ſmall two quarts for a peny. They ſhalbe committed vntill they haue paid the penaltie.

Aliens, tranſporting Bowes, or Arrowes.

P. Arch 6. Appellors, or Approuers. See hereof *paulo antea ſub hoc tit.*

Nor he which is Appealed by an Approuer, &c. *Ibid.*

Armour; perſons going or riding armed contrary to the Stat. of Northampton. See *hoc tit. paulo poſt.*

8. Eliz. 2. Arreſt; nor he which procureth one to be arreſted in another
P. Damages. 3 mans name, (not knowing thereof, or without his conſent.)

P. Baſt. 1. Baſtard; the mother, or reputed father of a Baſtard child, that ſhall not performe the Iuſtices order, after notice thereof.

The mother of a Baſtard child committed to the houſe of correction for her ſecond offence. See *antea tit. Baſtardy.*

Breakers of priſon. See hereof *paulo antea ſub hoc tit.*

21. H 8. 5. Bridges; Surueyors appointed for the repairing of Bridges, if
P. Bridges. 4. they refuſe to accompt.

Burners of houſes felloniouſly. See *paulo antea ſub hoc tit.*

Perſons Condemned in any of the Kings Courts, and by vertue thereof committed to priſon, vntill he haue agreed with the plaintife. *Stat. 1. R. 2. 12. & 2. H. 5. 2.*

Conſtables, &c. neglecting to leuy the forfeitures for abuſes in Alehouſes, &c. See hereof *antea tit. Alehouſes.*

Conſtables; neglecting to whip treſpaſſers in Corne, Orchyards, or Woods, &c. at the Iuſtices commandement. See hereof *antea tit. Treſpaſſe.*

Coniurers. *Vide Witches.*

Counterfetters of the Kings Seale. *Vide paulo antea ſub hoc tit.*

Cloath, Refuſers to bee Ouerſeers of Cloth. See *antea titulo, Cloth.*

Deere; perſons committed to priſon for committing any offence prohibited by the Statute 5. *Eliz. cap.* 21. for vnlawfull taking of Deere. See more *poſtea, Hunting.*

Dyers; vſing Logwood, and being thereof conuict, &c. 23. *Eliz. cap. 9. P. Dying.* 1.

Where baile is taken away

Excommunicate perſons, taken by a Writ of *Excommunicato capiendo. Vide paulo antea ſub hoc tit.*

Execution, ſuch as are in execution (vpon a ſtatute or Recog. or vpon Iudgement in the Kings Court) at the ſuit of any perſon; the Iuſtices of peace are not to baile ſuch. P. Sheriffs 8.

Feaſants. *Vide Partridges.*

1 Felons taken for the death of a man: yet if it bee not Murder, they may be bailed as it ſeemeth. But

2 Felons taken with the manner, are not baileable. *Vide paulo antea ſub hoc tit.*

3 Nor if it be apparantly knowen that they did it.

4 Nor if they confeſſe the felony vpon their examination before the Iuſtice of peace.

5 Nor if he be a thiefe openly knowen.

6 Nor, if hee bee of euill fame by credible report. Br. Mainp. 75.

Yet in theſe former caſes of felony, if it be not aboue the value of twelue pence (it ſeemeth) the Iuſtices of peace may baile the priſoner, it being no felony of death.

7 Nor he which is conuict or attaint of felony, is not baileable. See before *ſub hoc tit.*

Fiſh; deſtroyers of ponds, &c. wherein Fiſh are.

2 Fiſhers (vnlawfully) in any ſeuerall pond, &c. P. Fiſh. 7. Ibid.

3 Gageors, packers, or ſearchers of Fiſh, that ſhall take any extortion, &c. P. Fiſh. 11.

4 Eaters of Fleſh vpon Fiſh dayes. P. Fiſh. 1.

Forcible Entry or deteiner; perſons conuict thereof, ſhall not be bailed, vntill they haue paid their fine.

Foreſtallers, Regrators, and Engroſſers being conuicted thereof, ſhalbe committed for two moneths without baile. 5. Ed. 6. 14. P. 4.

Forgers of deeds, writings ſealed, wills, or court Rolles being conuicted thereof. 5. *Eliz.* 14. *P.* 1. 13. Eliz. 25.

2 Nor the aſſenters thereto.

3 Nor the publiſhers thereof, knowing the ſame, &c.

Fowle; deſtroyers of any Feaſant, Patridge, Pigeon, &c. nor ſhooters at them. *Vide antea tit. Partridges.*

Fraudulent Conueyances, gifts, bonds, or ſuites. 13. Eliz. 5. P. Fraud. 3.

1 The parties thereto.

2 The defenders or iuſtifiers thereof knowing it, &c.

3 And thoſe which ſhall aſſigne ouer any landes, leaſes, or goods, ſo to them conueyed.

Euerie perſon being of any of theſe offences lawfully conuicted, ſhall ſuffer impriſonment one halfe yeare without bayle. See more Stat. 14. *Elizab.* 11. *&* 27. *Elizab.* 4.

Games

Games vnlawfull. *Vide antea ſub tit. Game.*

Where baile is taken away

1 Maintainers of houſes, or places, for any vnlawfull Games.

2 Players in common houſes or places.

3 Players at any vnlawfull Game.

Gaolers, Collectors, or Surueyors for Gaoles (in certaine Shires) refuſing to make account, &c. 23. *H.*8. *cap.*2. 5. *Eliz.*24. & 13. *Eliz.*25.

Gunnes; ſuch as keepe, carry, or vſe any Gunnes, Dags, Croſſe-bowes, or ſtonebowes contrary to the ſtat. See *antea tit. Gunnes.*

Hares; deſtroyers of them: *Vide antea tit. Partridges.*

Courſers of Hares in the ſnow.

8 Eliz. 11. P. Hatts. 3. Hatters; which ſhall take aboue two apprentices.

2 Which ſhall take apprentice for leſſe then ſeuen yeares.

5. Eliz. 1. P. Hawkes 1. Hawkes; takers (vnlawfully) of any Hawks, or their egges, out of another mans grounds, and being therof lawfully conuicted.

Hawkers, between the firſt day of Iuly, and the 31. of Auguſt. See more before *tit. Partridges.*

Highwayes, Bailiffes, and high Conſtables, which ſhal not pay the forfeitures by them collected, &c. See *antea tit. Highwayes.*

Hony; *Vide Waxe.*

Hunting, or keeping of Dogges, Ferrets, or Nets by ſuch as haue not ſufficient liuing. *Poulton. Hunting.* 1. & *Feſants.* 7. *Vide antea tit. Partridges.*

Hunters; or killers of any Deere, or Conies, in the night time, in any Parke or Warreine, or other incloſed grounds, and being thereof lawfully conuicted. 3. *Iac.* 13. *P. Foreſts.* 9. *Vide ſtat.* 23. *Eliz.* 10. 1. *Iac. c. p.* 17. & 7. *Ia.* 13.

P. Newes. 1. King; ſpeakers of falſe newes, which may cauſe diſcord betweene the King and his people.

2 Speakers of falſe newes, or lyes, of any the Peeres, or great Officers.

3 Perſons committed by the King, or Counſels commandement, are not baileable. *Vide paulo antea ſub hoc tit.*

Stamf. 77. b. 4 Soe in all caſes where a Statute ordeineth, that an offendor ſhalbe impriſoned at the Kings will or pleaſure, there the priſoner cannot bee bailed or deliuered vntill the King hath ſignified his pleaſure of him; (As if one bee impriſoned for going or riding armed contrary to the Statute of Northampton, made *Anno* 2. *Edw.* 3. 3.

Lambt. 555. And in ſuch caſes the priſoner is to redeeme his libertie with ſome portion of money, as hee can beſt agree with the King, or his Iuſtices for the ſame: And ſo it ſeemeth the Iuſtices before whome ſuch an offendor ſhall be conuict, may aſſeſſe ſuch fine

Where baile is taken away

or ranſome, according to their diſcretions, and vpon payment thereof may baile the priſoner: for the King therin ſignifieth his pleaſure, by the mouth of his Iuſtices. See the firſt Title of *Forcible Entrie*.

Laborers, or Artificers departing from their worke, before it it be finiſhed. 5. *Eliz.* 4. P. Laborers. 10

Seruants, departing before their time bee ended. See *antea tit. Labourers.*

2 Or at the end of their term, without a quarters warning, &c.

3 Maſters giuing, and ſeruants taking wages contrary to the Proclamation, &c.

4 Perſons refuſing to ſerue for the wages appointed by Proclamation, &c.

5 Or haue promiſed to ſerue accordingly, and doe not.

6 Perſons refuſing to be bound Apprentices.

7 Women refuſing to ſerue, &c.

8 Maſters, reteining, or hiring a ſeruant for leſſe time then for one whole yeare. *Vide antea tit. Labourers.*

9 Maſters, reteining a ſeruant that is departed out of ſeruice, without ſhewing his Teſtimoniall.

10 Maſters taking apprentices contrary to the Statute.

Liueries; ſuch as at their proper coſtes, ſhall buy or weare any Liueries, Clothes, or Hats, to haue maintenance, and be thereof conuicted. 8. H. 6. 4. P. Liueries, 2.

Maulting, notwithſtanding reſtreint. *Vide antea tit. Mault.*

Maultſters, buying barley after reſtreint, or diſobeying any other order ſet downe, &c.

Money; perſons taken for falſifying the Kings Money. *Vide paulo antea ſub hoc titulo.*

Muſters; perſons abſenting themſelues. P. Capt. 12.

2 Or not bringing their beſt Furniture, &c. and being thereof conuicted, ſhall bee committed without baile, till they haue paid the forfeiture.

Oath; refuſers to take the oath of Allegeance. *Vide tit. Recuſants.*

Newes: See before *King.*

Partridges, &c. deſtroyers of them. *Vide antea tit. Partridges.*

2 Deſtroyers of egges of any Partridge, Feſant, or Swanne.

3 Takers of Partridges, Feſants, or Doues, with ſetting dogs, netts, or other engines.

4 Hawkers at Partridge, in Iuly, or Auguſt.

Periury; perſons committing periury, by his or their depoſition, in any Court of Record, or Court Baron, being thereof lawfully conuicted. 5. Eliz. 9. P. Per. 1, 2.

2 See

2 So of procurers of ſuch Periury.

Where Bayls is taken away

Plague; refuſers to pay their rates, for reliefe of perſons infected with the plague. *Vide antea tit. Plague.*

Poore; refuſers to pay their rates, towards the reliefe &c. of the poore. *Vide antea tit. Poore.*

2 Ouerſeers, refuſing to make their account. See the ſtatute of 14. *Eliz.* 15. & 18. *Eliz.* 3.

3 Ouerſeers, refuſing to pay ſuch arrerages as ſhall remaine in their hands.

4 Ouerſeers negligent in their office. *Vide antea tit. Poore.*

5 The grandfather, or grandchilde, or other parents, or children, refuſing to relieue one the other, as ſhall bee aſſeſſed at the Seſſions. *Ibidem.*

6 Refuſers to pay their rates toward the Marſhalſey, and K. Bench, &c. *Vide antea tit. Stocke of the poore.*

P. Sacram 2. Prayers; ſuch as offend againſt the Statute 1. *Eliz. cap.* 2. concerning Vniformitie of common Prayer, and Seruice in the Church, and be thereof lawfully conuicted by verdict of twelue men, or by their owne confeſſion, or by the notorious euidence of the fact.

1 M. 1. Preachers; diſturbers of Preachers, their ayders, and procurers. See *antea tit. Preachers.*

2 Such as ſhall diſturbe the arreſting of ſuch offendor.

3 Such as ſhall reſcue any ſuch offendor.

Priſon; breakers thereof. See heereof *paulo antea ſub hoc titulo, Bailement.*

Propheſies; to the intent to make diſturbance within the kings dominions. *Vide antea tit. Propheſies.*

P. Puru. 32. Purueyors; taking purueiance within fiue miles of either Vniuerſitie of Cambridge, or Oxford. 2. & 3. *P. & M.* 15. & 13 *El.* 21.

W. Purue. 2. Purueyors of Noble perſons that ſhall take any thing againſt the owners conſent.

Recuſants;

1 Such as (being ſuſpect) ſhall refuſe to anſwere the Iuſtice of of peace vpon oath, whether they be Recuſants or no. *Vide antea titulo Recuſants.*

2 Popiſh Recuſants refuſing to take the oath of Allegeance.

3 Euery other perſon refuſing to take the oath of Allegeance. 7. *Iac. cap.* 6.

4 A Woman Recuſant conuicted, not conforming her ſelfe.

3. Iac. 5. P. Recuſ. 75 5 Recuſants refuſing to declare what armour, &c. they haue, or diſturbing the deliuery thereof.

Where Bayle is taken away

6 Recuſants and Sectaries, which ſhall impugne the Kings authoritie in cauſes Eccleſiaſticall. P. Recuſ. 18.

7 Or that ſhall perſwade others thereto; or from comming to Church, &c.

8 Or ſhall meet at any conuenticles, vnder colour of Religion, and ſhall be of any of theſe laſt offences lawfully conuicted, ſhall be committed to priſon without baile, vntill they conforme themſelues.

9 Perſons abſent from Church any Sunday, and not hauing whereon to be diſtreined, ſhall bee committed vntill paiment bee made of the forfeiture.

Riotters; attainted of great Riotts, ſhall haue one yeares imprisonment without baile. 2. H. 5. 8. P. Riots 11.

All perſons conuicted (by the view of the Iuſtices) of any riot, ſhalbe committed vntill they haue paid their fine.

Rogues incorrigible, committed vntill the Seſſions, or Gaole deliuery.

Seruants: ſee *Labourers*.

Schoolemaſter; that is a Recuſant: 23. Eliz. 1.

2 Or that is not allowed by the Ordinary, and being of either of the ſaid offences conuicted, ſhall bee impriſoned for one whole yeare without baile. P. Recuſ. 2.

Sheriffes, not making their election of Knighes for the Parliament, in their full Countie, betweene the houres of 8. and 11. in the forenoone. P. Parliam. 4.

2 Or returning Knights for the Parliament, contrary to the ſtatute: And being thereof attainted before the Iuſtices of Aſſiſe, they ſhalbe impriſoned one whole yeare without baile.

Soldiers, who haue purloined their horſes, or harneis.

Stocke of the Shire, refuſers to pay their rates thereto.

Tithes; the defendant in a ſuite for Tithes, that diſobeyeth the Iudges ſentence.

Tranſportation; the Maſter, or Mariners tranſporting corne, Beere, Herring, Whitage, or Wood without licenſe, and beeing thereof conuicted; and ſo of the owners of ſuch things: and the Mariners for carying any ſuch things into any ſhip to bee tranſported, or for carying more then is licenſed. P. Corne. 1, 2, 3

2 The Maſter, or Mariners, tranſporting, or ſhipping to that intent, any leather, tallow, or raw hides. P. Leather. 1.

3 Tranſporters of liue ſheepe.

4 Perſons that ſhall bring, deliuer, ſend, receiue, take, or procure any liue ſheepe to be conueyed. 8. Eliz. 3. P. Sheepe. 1.

5 Aliens, tranſporting Bowes or Arrowes.

Treaſon; 33. H. 8. 9.

Treaſon: Perſons committed for any treaſon touching the king. See *antea ſub hoc tit.* *Where Bayle is taken away*

Counters of money, or of the kings ſeale. *ibid.*

Vagabonds. See before Rogues.

Vtlawed perſons, taken for the ſame. *ibid.*

P. Waxe 7. Waxe; Hony, counterfeiters of markes, or marking with another mans marke, being thereof conuicted.

P. Weights 13. 1 Iacobi 12. Weights, falſefiers, or counterfeiters thereof.

P. Coniur 2. Witches; Coniurers, Sorcerers, and ſuch that ſhall take vpon them, to hurt any perſon in body, though it be not effected, or that ſhall hurt any cattell, or goods, and being of any of the ſaid offences lawfully conuicted.

P. Ph. & Ma. cap 8. P. Women 7. Women; taking of women (vnmaried, and vnder the age of 16. yeares) out of the poſſeſſion of their parents, or other perſon hauing lawfully the keeping &c. of them, and againſt their wills: The offendor being thereof conuict, ſhall be two yeares impriſoned without baile &c.

P. Women 8. 2 Deflowring, or contracting marirage with ſuch a woman, the offendors being thereof conuict, ſhall haue fiue yeares impriſonment without baile &c.

Recogniſance.

Recogniſance.

A Recogniſance is a bond of Record, teſtifying the Recogniſor to owe a certaine ſumme of mony to ſome other, and the acknowledging of the ſame is to remain of record; and none can take it but only a Iudge or officer of record.

And theſe recog. in ſome caſes, the Iuſtices of peace are enabled to take, by the expreſſe words of certaine ſtatutes: but in other caſes (as for the peace, and good behauior, and the like) it is rather in congruitie, then by any expreſſe authority giuen them either by their commiſſion, or by ſtatute.

Note whereſoeuer any ſtat. giueth them power to take a bond of any man, or to bind ouer any man, or to take ſureties for any matter or cauſe, it ſeemeth they may take a recog. yea whereſoeuer they haue authority giuen them, to cauſe a man to do a thing, there it ſeemeth they haue (in congruitie) power giuen them to bind the party by recog. to performe, or do it: and if the partie ſhall refuſe ſo to be bound, that then the Iu. may ſend him to the gaole; for it is a rule in law, *Conceſſo vno aliquo, etiam id concedi videtur, ſine quo prius conceſſum haberi nequit*, But yet inquire of this laſt caſe, for there is alſo another rule, *In generali conceſſione non veniunt ea, quæ quis non eſſet veriſimiliter in ſpecie conceſſurus.* Cromp. 197. See Fitz. 82.

I will here ſet downe only ſome particulers where the Iuſtices of peace (out of their ſeſſions) may take a recog.

One Iu. of peace may take a recog. for the peace.

Alſo one Iu. of P. may take a recog. for the good behauiour, by the commiſſion. And theſe the Iuſt. of P. may take, either vpon diſcretion, or vpon complaint made to him, or vpon a *ſupplicauit* deliuered to him.

One Iu. of peace may bind by recogniſance, ſuch as do declare any thing againſt a felon: and ſo in diuers other offences.

One Iu. of P. may bind by recog. ſuch as keepe any common houſes or places for vnlawful games, that they keepe the ſame no longer. See *antea tit. Games &c.*

And

And alſo ſuch as play at vnlawful games, that they vſe the ſame no more.

One Iuſt. of P. may bind ouer perſons ſuſpected to vſe Logwood in dying, and ſuch as can diſcouer the ſame. See *antea tit. Dying.*

One Iuſtice may bind by recog. takers of partridges &c. and hawkers in corne, to appeare at next ſeſſions to anſwere their ſaid offences. See *antea tit. Partridges.*

One Iuſt. of P. may bind by recogniſance any perſon conuicted for taking or deſtroying any feſants, partridges, fowle, or hare, that they offend not hereafter in any the particulars any more.

Alſo they vſe (by way of preuention) to bind trannellers for larkes, that they ſhall deſtroy no partridges &c. *quære* of this, how it is warranted. See *poſtea tit. Warrants.*

One Iu. of P. may bind by recog. the maſter that ſhall miſuſe his apprentice &c. to appeare at the next ſeſſions, &c. See *antea tit. Apprentices.*

Two Iuſtices &c. may take recog. of Alehouſe-keepers for keeping good orders &c. See here 25.

They may bind by recog. an Alehouſe-keeper (committed for victualing without licence) that hee ſhall keepe no more an Alehouſe. See *antea tit. Alehouſes.*

Two Iuſtices &c. may baile priſoners, which muſt be done by recog. See here *tit. Bailement.*

They may bind the Ouerſeers of cloth by recog. to ſee the ſtatute obſerued. See hereof *antea tit. Cloth.*

Alſo two Iuſtices of P. may bind by recogniſance the defendant in a ſuit of tythes, to obey the ſentence of the Iudge. See *antea tit. Tythes.*

Whether the Iuſtices of peace may bind an offendor againſt a penall ſtatute, to appeare and anſwere his fault at the ſeſſions. See hereof *poſtea tit. Warrants.*

33 H. 8. 39. P. Accompt 1. Note that euery obligation and recog. taken by Iuſtices of P. muſt be made to the king, and ſhall be made by theſe words, *Domino Regi*, vpon paine of impriſonment, of any perſon that ſhall take it otherwiſe. And all ſuch bonds, ſhall be in the nature of a ſtatute Staple, to all intents, See hereof *poſtea tit. Recogniſances.*

A Iuſtice of P. can take no recogniſance but only for ſuch matters as concerne his office. See hereof *tit. Suretie for the peace antea.*

Note alſo that a recogniſance taken by a Iuſtice of peace, is a matter of record, preſently, ſo ſoone as it is taken and acknowledged,

ledged, although it bee not made vp, but onely entred into his booke: nay although it not entred, as it ſeemeth. See *Stamf.* 77. *a.* ſuch a matter.

If a Iuſtice of peace ſhall take a recogniſance where he hath no authoritie, it ſeemeth void. See *hic* 142.

And theſe recogniſances taken by the Iuſtices of peace are to be certified by them at their next quarter ſeſſions: except recog. taken of ſuch as ſhall informe againſt felons, and vpon bayle-ments of felons, which by ſtatute they are appointed to certifie at their next generall gaole deliuery. See *antea tit. Felonie.*

For the formes of recogniſances. See hereafter *tit. Recogni-ſances.*

Warrants.



Warrants.

NOw concerning the precepts, or warrants, made by the Iuſtices of peace.

Lamb.87. The Iu.of P. (ſeeing that he is a Iudge of record) his precept or commandement, by word of mouth (in ſome caſes) is as ſtrong as his precept in writing. *By Parol.*

And therfore the Iu.of P. vpon a riot done in his preſence, may command the riottors to bee arreſted, and cauſe them to find ſureties for their good behauiour.

So vpon an affray, aſſault, threatning, or other breach of the peace, done in his preſence, the Iu.of P. may command by word, the officer being preſent, or his owne ſeruant, to arreſt ſuch offendours to find ſureties for the peace. See before *tit. Surety for the Peace.*

14.H.7.8.9. And where the Iu.of P. commandeth one being preſent, to arreſt another that is alſo in his preſence, though that commaundement be by word only, it is good, and it is reputed as an arreſt made by the Iuſtice himſelfe, hee being preſent when the arreſt is made.

14.H.7.8. Br.Peace 7. But the Iuſtices of P. cannot command by word, to arreſt another being out of their preſence: neither may one in the abſence of the Iu. arreſt another vpon his command by parol, but it muſt be by a precept or warrant in writing, by the greater opinion of the Iuſtices.

14.H.7.9.10. And yet in caſe of riottors the Iuſt.of P. may by word command his ſeruants to arreſt them, in the abſence of the Iu. by the opinions of *Fineux* and *Tremaile* Iuſtices. See hereof *antea tit. Riots.*

Now their warrant or precept by writing, ought to bee vnder their hand and ſeale, or vnder their hand at leaſt. *By writing.*

And if it bee for the peace, or good behauiour, or the like, where ſureties are to bee found or requyred, There the warrant ought to contayne the ſpeciall cauſe and matter, whereupon it is graunted, to the intent that the partie (vpon whom *The forme.*

whom it is to bee ſerued) may prouide his ſurcties readie, and take them with him to the Iuſt. of peace, to bee bound for him: But if the warrant be for treaſon, murder, or felony, or other capitall offence, or for great conſpiracies, rebellious aſſemblies, or the like, it needs not contain any ſpeciall cauſe, but there the warrant of the Iuſtice of peace may be, to bring the party before him to make anſwere to ſuch things or matters generally, as ſhall be obiected againſt him, on the K. maieſties behalfe, and this is now the common vſage by the report of maſter *Crompton*. Cromp. 148.

And I once receiued a warrant, brought me by one *Thomas Euans* (a purſiuant or meſſenger of his maieſties chamber) vnder the hand of the right honourable *Thomas* Lord *Elleſmeere* late Lord Chauncellour of England, for the apprehending of one *Iames Malin*, for a matter of contempt, and the ſaid warrant was in generall words, *ſcilicet*, to anſwere to ſuch matters, as were to be obiected againſt him, without any ſpeciall cauſe therein mentioned. An. dom. 1607.

Alſo I ſaw another warrant granted vnder the hand of *Popham* chiefe Iuſt. to bring one *Edmonds* (of Barnewell by Cambridge) before him, to anſwere to ſuch matters as he had to obiect againſt him, on the K. maieſties behalfe, without any ſpecial cauſe or matter therein ſet downe. 3 Iacobi.

Againe the warrant of the Iu. of P. is the better, if it beare date of the place where it was made, and it muſt expreſſe the yeare and day when it was made. 14 H. 8. 16. Lambt. 90.

A Iu. of P. who is dwelling out of the countie, graunteth his warrant to be ſerued within the countie, the officer cannot carrie the partie out of the countie to the Iuſtice of peace who made the warrant, but muſt carie him before ſome other Iuſtice within the countie. Plo. 37.

Quære whether ſuch a warrant be good or no:

Firſt, for that a Iuſtice of P. hath no authorite, but in the countie where he is a Iuſtice, and in commiſſion. See *antea tit. Iuſtice of Peace.* And

Againe, for that the date of the place ſeemeth to be materiall by the booke 14. *H.* 8. aforeſaid.

The Iu. of P. may make his warrant, to bring the party before himſelfe, and then the officer needs not to carrie the partie before any other Iuſtice: And yet vpon a warrant for the peace granted *ex officio*, the vſuall manner is otherwiſe. See *antea tit. Suretie for the Peace.* Br. Peace 9. Co. 5. 59.

Alſo the Iuſtice of peace may in ſome caſes make his warrant, to attach the offendor to be at the next ſeſſions of the peace, there to anſwere his ſaid offence &c. See *poſtea Warrants.*

A

A Iu. of peace *(ex officio,* by the first *Assig.* in the Commission) may graunt his warrant to arrest or attach one that hath broken the peace, or committed other misdemeanour against the peace, to find sureties for the peace, or good behauiour. *For what cause.*

Also the Iustices of peace in diuers cases (as the case shall require) do vse to grant their warrant against a man for his neglect, or other default, as for refusing to pay countrie or towne rates, and the like. And such warrant may be either to attach the offendor to be at the next Sessions, there to answere &c. or else to bring the offendor before the said Iustice, or any other Iustice &c. who finding cause, may bind such an offendor to appeare at the next sess. to answere the said default.

Also whersoeuer any statute doth giue authority to the Iustices of peace to cause another person to do a thing, there it seemeth, they haue power giuen them (of congruitie) to grant their warrant to bring such person before them, that so they may take order therein. *(tamen quære)* See *antea tit. Recognisance.*

14. H. 8. 16. Br. Peace 6. See Br. Com. 3

But I find it much controuerted, whether a Iu. of P. may grant a warrant to attach persons suspected of felony; or against offendors vpon a penall statute, vnlesse such persons, or offendors, be first thereof indicted; for that the Iu. of P. as he is a Iudge of record, so it is said, hee must haue a record, whereupon he doth award his proces, or precept.

For the first, some hold that the Iustice of peace may grant his warrant to attach persons suspected of felony, for that it seemeth by the first *Assignauimus*, in the commission, and by the statute of 5. *Ed.* 3. 14. that any one Iustice of peace may cause the Constables to arrest and imprison offendors suspected of felony &c. And how shall the Iu. of P. cause this to be done but by his warrant or commandement.

Againe if a felony bee done, there is doubt but that euery priuate man without a warrant may arrest whomsoeuer he suspecteth of it, being a man of fame &c. See hereof *postea tit. Arrest.* But if the offendor being pursued shall resist, *quære* who shall bee aiding to a priuate man, who goods art stolne, & who suspecteth another to haue stolne them, either to search for his goods, or to apprehend the party suspected: if the Iu. of P. (by his warrant) shall not commaund the Constable to aide him therein. If it bee obiected that the Constable may do all this of his own authority (vpon request to him made by the party robbed) it is true: yet we find by common experience, that the Constable without the Iu warrant therin, are for the most part, both very fearefull & also remisse herein, as neither knowing their owne authority, nor the danger.

Beſides, this is no new thing, for there is ſuch a preſident in the old booke of Iuſtices of peace (*impreſſ.* 1561 *fol.* 41.a.) yea it is a common practiſe at this day, and it ſeemeth to be verie ſeruiceable. Lamb. 193.

And yet by the opinion of the court 14. *H.* 8. a Iuſtice of peace cannot make a warrant to arreſt a felon, vnleſſe he be indicted of felony: But if the conſtable, or other officer, ſhal ſerue ſuch a warrant, he ſhal iuſtifie the ſame though the Iuſt. did erre in the awarding thereof. See 24. *Ed.* 3. 9. 14. H. 8. 18. B. F. Impriſ. 8. & 9. Co. 12. 76.

Next for the Iuſtices of peace to bind ouer, or to grant a warrant againſt offendors vpon any penall ſtatute, to appeare at the ſeſſions, to anſwere to their offence or fault, though ſuch ſtatute be within the power of the Iuſtice of peace, yet ſuch warrant, or binding ouer of ſuch offendours, ſeemeth not warranted; vnleſſe it bee ſpecially ſo appointed in the ſtatute, As it is by the ſtatutes of 5. *Elizab. cap.* 4. 61. 23. *Elizab.* 10. 52. & 69. 39. *Elizab.* 11. 33. *H.* 8. 1. See *antea tit. Counterfeiting, Dying, and Egyptians.* Lamb. 191. Cromp. 107. The inconuenience thereof. See Lamb. 192.

But ſuch offendors ought firſt to be indicted, and thereupon proceſſe from the ſeſſions is to bee awarded againſt them vntill they come in &c.

And yet there bee ſundry preſidents of attachments, made from one Iuſtice of peace againſt labourers and ſeruants, that ſhall refuſe to ſerue, or that ſhall depart out of their ſeruice &c. contrarie to the ſtatutes, to be before the Iuſtices at their ſeſſions, to anſwere to their ſaid defaults: But theſe ſeeme alſo to bee warranted, and ſo appointed by the ſtatute of labourers made *anno* 25. *Ed.* 3. *cap.* 6. See the ſtatute. It is vſuall, by way of preuention, to bind by recogniſance, ſuch as do ſtrannell for larkes, that they ſhall deſtroy no partridges: as alſo to bind by recogniſance butchers, and all victualers, that they ſhall not kill, nor dreſſe any fleſh in Lent time, contrarie to the lawes: And for theſe purpoſes the Iuſtices of peace do graunt out their warrants to conuent the ſaid perſons before them: For victualers, I haue knowne ſundrie Proclamations to warrant the Iuſtices of peace therein: But for the other, what law or warrant there be for it, I know not, vntill the offendor be conuicted, See *hic tit. Partridges*, Yet ſee *antea tit. Heare and Determine & Bailement*, where the Iuſtices may graunt their warrants againſt offendors vpon penall ſtatutes. Cromp. 238. Lamb. 191. Raſtal. 232. d.

To whom directed. The Iuſtice of P. may direct his precept or warrant to the ſheriſe, bailife, conſtable, or other officer, or to any other indifferent perſon by name, though he be no officer, yea to any perſon that he ſhall thinke meet: but yet the ſafeſt way is to direct it to the Conſtables, or to ſome other ſworne officers.

Cromp.147. A warrant directed, by the Iu.of P.to the Conſtable, or other ſworne officer, and to a ſtranger, who is no officer, and the warrant is made, *coniunctim & diuiſim*, and is deliuered to the ſtranger who executeth it, all this is good.

Lamb.91. A warrant directed by the Iu.of P.to two men iointly, to arreſt another &c.yet any one of them alone may do it.

A warrant directed by the Iuſtice of peace to the ſherife, hee may, by word, commaund his vnderſherife, bailife, or other ſworne or knowne officer to ſerue it, without any precept by writing.

But if the ſherife will commaund another man (that is no ſuch knowne officer) to ſerue it, hee muſt deliuer him a precept in writing, otherwiſe a writ of falſe impriſonment, will lie for the arreſt.

A warrant directed by the Iu.of P.to the ſherifs bailif, or to the conſtable, or to the Iu.ſeruant, or to an eſtranger, to arreſt one &c. ſuch perſon (to whom that warrant is made) muſt ſerue it himſelf, for theſe can commaund none other to do it, neither by word, nor writing, nor make any deputy.

The officer to whom any warrant ſhalbe directed and deliuered, ought with all ſpeed and ſecrecy, to ſeek and find out the party, and then to execute his ſaid warrant. *The officers dutie.*

8.E.4.14. 14.H.7.9.b. 20.H.7.13. 21.H.7.24. Co.9.69. A ſworne or knowne officer, be he ſherife, vnderſherif, bailife, or conſtable &c.needs not to ſhew his warrant to a man, when he commeth to ſerue it vpon him, although he demandeth it: But if the Iu. will direct his warrant to his ſeruant, or to another (who is no ſworne officer) to ſerue it, they muſt ſhew their warrant to the partie, if he demand it, or otherwiſe the party may make reſiſtance, and needs not to obey it.

Co.6.54. & 9.68. But a ſworne and knowne officer, if he will not ſhew his warrant to the party, yet hee ought (vpon the arreſt) to declare the contents of his warrant &c.

Co.9.69. And an officer giueth ſufficient notice what he is, when he ſayeth to the party, I arreſt you in the K.name &c. And in ſuch caſe the party at his perill ought to obey him though he knoweth him not to be an officer: and if he haue no lawfull warrant, the partie grieued may haue his action of falſe impriſonment againſt him.

Dyer 244. 1.Barr.248 Lamb.93. If an officer do arreſt a man for the peace, or the like, before that hee hath any warrant, and then afterwards, doth procure a warrant (or a warrant commeth after to him) to arreſt the partie for the ſame cauſe, yet the firſt arreſt was wrongful, and the officer is ſubiect to an action of falſe impriſonment.

The officer, vpon any warrant from a Iuſtice of peace, for the

peace,or good behauiour, or in any other cauſe where the K.is a party, may by force breake open a mans houſe,to arreſt the offendor &c.See hereof *antea*,in the former title *Forcible Entrie*.

If an officer,or other perſon,hath arreſted a man by vertue of his warrant, which hee hath from a Iuſtice of P.and then taketh his promiſe that he will come againe to him ſuch a day to goe to the Iuſtice with him according to his warrant (and ſo letteth the party go) who comes not againe at the day appointed,it ſeemeth the officer cannot after arreſt or take him againe by force of his former warrant, for that this was by the conſent of the officer: Co.3.44.52. But if the partie arreſted had eſcaped (of his owne wrong) without the conſent of the Officer, now vpon freſh ſuite, the officer may take him againe,although he were out of view,or that he ſhall flie into another towne or countie.See more *poſtea tit.Impriſonment*.

If an officer hauing a lawfull warrant to arreſt another, ſhal be 21.H.7.39. reſiſted,or aſſaulted by the party,or by any other perſon,the may that officer iuſtifie the beating or hurting of ſuch perſons.

If a Iu. of peace ſhall make any warrant for a matter wherein 14.H.8.16. he hath iuriſdiction, although it be beyond his authoritie,yet is Br. F.Impriſ.8. it not diſputable by the Conſtable, or other ſuch officer,but muſt Lambt.67.44. bee obeyed and executed by the officer: as if the Iuſt. of peace ſhall make his warrant to arreſt one for the peace,or good behauiour &c. without cauſe, the officer ſhall not be puniſhed for executing this: But yet if a Iu.of P. ſhall make his warrant, to do a Co.10.76. thing out of his iuriſdiction, or in a cauſe whereof the Iu.of P. is Cromp.147. no Iudge,if the officer ſhall execute ſuch a warrant,here he is puniſhable; for the officer is not bound to obey him, who is not Iudge of the cauſe,no more then a meere ſtranger: And ſo note that the officer is bound to take notice of the authority and iuriſdiction of the Iudge.

If any man ſhall abuſe the Iu.of P.his warrant,as by caſting of it into the dirt,or treading it vnder his feet &c. it ſeemeth he may Cromp.144. be bound to his good behauiour therfore,& may alſo be indicted and fined therefore,for it is the K. proces.

When any perſon commeth before the Iuſtice of peace by force of any warrant for the peace,good behauiour,or for a riot, or the like,the party muſt offer ſurties, or elſe the Iu.may commit him. See *antea tit.Suretie for the Peace*.

If a Iuſtice of peace ſhall graunt his warrant to one to apprehend another for murder,robbery,or felony,it ſhalbe ſafe for the Iuſtice, vpon the deliuerie of his ſaid warrant, to take (vpon oath)

oath) the examination of the ſaid party that requireth the warrāt, or at leaſt to bind him ouer by recog. to giue euidence at the next gaole deliuery &c. againſt the offendor, leaſt that afterwards when the offendor ſhal be brought (by the officer) before the Iuſt. vpon his ſaid warrant, or elſe happen to yeeld himſelfe to the ſaid Iuſt. then the party that procured the warrant to be gone: For by credible report I am informed, that one hauing procured a warrant from a Iu. of P. in Suff. againſt another for a robbery done vpon the high-way, and the Iuſt. vpon the deliuerie of his warrant, not hauing bound ouer the complainant to giue euidence, nor taken his examination as aforeſaid, that at the next aſſiſes, and gaole deliuery, the party charged with the robbery, came and offred himſelfe to the ſaid Iu. of P. who immediatly acquainted Sir *Thomas Flemming* (then Lord chiefe Iu. and Iudge of Aſſiſe there) with the whole matter, But the ſaid Iudge much blamed the ſaid Iu. of P. for not hauing bound ouer the ſaid complainant at the firſt when he granted him the warrant, and charged the ſaid Iu. of P. at his perill, preſently to ſend for the party complainant, to come to giue euidence &c. And further directed the ſaid Iuſt. of P. preſently to bind ouer the party charged with good ſureties, for his attendance and appearance.

Arreſt, and Impriſonment.

What.

AN arreſt is the apprehending, and firſt reſtraining of a mans perſon, depriuing it of his owne will and libertie; and may be called the beginning of impriſonment.

Impriſonment, is where a man is arreſted againſt his will, and is reſtrained of his libertie, by putting him into the gaole, cage, or ſtockes, or into ſome houſe, or otherwiſe by keeping him in the high ſtreete, or open field, ſo as he cannot freely go at liberty when and whither he would.

If the Conſtable, or other officer (vpon a warrant receiued from a Iu. of P.) ſhal come vnto the party, and require, or charge, or commaund him to go, or come before the Iu. &c. this is no arreſt, or impriſonment: and vpon a warrant for the peace, the officer ought firſt to require the party to go before the Iuſt. before he may arreſt him. See hereof *antea tit. Suretie for the peace.*

But this arreſt (being in execution of the commandement of ſome court, or of ſome officer of Iuſtice) is expreſſed in their writs, precepts, or warrants, by theſe words, or the like, *ſc. Capias, Attachias, &c.* to attach, arreſt, take, bring, or conuey, or cauſe to be attached, arreſted, &c. All which words do imploy the taking, and laying hold of the perſon.

What perſons.

To this arreſt, all lay perſons (vnder the degree of Barons, or Peeres of the realme) be ſubiect, and that by warrant from the Iuſtices of peace, as you may ſee here before *tit. Peace antea.*

But the Iuſtices of peace are not to grant their warrants for the peac, or the like, againſt any Noble man: And yet if a *Capias*, or attachment ſhall bee awarded againſt a Baron or Peere of the realme, from the K. Iuſtices at Weſtm. for a contempt, or in caſe of debt or treſpaſſe, the officer without any offence of law, may execute the ſame, for that the officer is not to diſpute the authoritie of the court. Co. 9. 54.

Eccle-

See P. Arreſt. 1 Eccleſiaſticall perſons alſo may be arreſted, and that by a warrant from the Iuſtices of peace in ſome caſes. See hereof *tit. Suretie for the peace.*

Co. 9. 56. The libertie of a man is a thing ſpecially fauoured by the common law of this land: And therefore if any of the Kings ſubiects ſhall impriſon another without ſufficient warrant of him, or his Law, the partie grieued may haue his action, and ſhall recouer damages againſt the other: And the King alſo ſhall haue a fine of him: For impriſonment of another, without offence of the Law, is one of the Kings royall prerogatiues, and onely annexed to the crowne.

P. Accuſat. 1. Alſo by the Statute of *Magna Charta*, made 9. *H.* 3. *cap.* 29. No freeman ſhalbe taken, or impriſoned, &c. but by the lawfull iudgment of his equals, *ſc.* by the verdict of a Iury of twelue good and lawfull men, or by the law of the realme.

Co. 10. 74. And by this Statute of *Magna Charta*, Euery arreſt or impriſonment, and euery oppreſſion againſt the law of the land, is forbidden; and if any Iudge, officer, or other perſon, againſt the law, ſhall vſurpe any Iuriſdiction, and by colour thereof, ſhall arreſt, impriſon, or oppreſſe any man, it is puniſhable by this Statute. See *Co.* 10. 75.

Note, that all Iuriſdiction ought to be either by Charter, or by Preſcription. *Co.* 11. 99.

Alſo the body of a man ſhall not bee arreſted or taken for any debt, treſpaſſe, or the like, but by Proceſſe awarded out of ſome Court of Record. See *P. Accuſation.* 1. 42. *Aſſ.* 5. Or by warrant granted by ſome Iudge of Record.

Neither ſhall any man commit another to priſon, except hee be a Iudge of Record. *Co.* 10. 103.

See Co. 3. 12. a. And yet for Miſdemeanors done againſt the Kings peace, the offendors may by the common law be arreſted and impriſoned, by the officers of Iuſtice, and ſometimes by priuate perſons, as hereunder followeth. *By whom.*

10 E. 4. 7. Euery priuate man may arreſt another, whom hee knoweth to haue committed a Robbery, Manſlaughter, or other felony, and may deliuer him to the Conſtable of the towne where ſuch an offendor is apprehended; Or (in the Conſtables abſence may impriſon and ſet him in the ſtockes; & if there be no ſtocks there, it ſeemeth he may carry the offendor to the next towne, and deliuer him to the Conſtable there; ſee 9. *Ed.* 4. 28.

Alſo when a felony is committed, euery man may arreſt ſuſpitious perſons that bee of euill fame, &c. and if ſuch perſon ſhall make reſiſtance, the other may iuſtifie to beate him.

But

But for the arresting of such suspitious persons, note, that there must be some felony committed in deed.

Also the party that shal arrest such suspected person, must haue a suspition of him himselfe, and for the same felony, or otherwise suspition generally is no cause to arrest another. See *antea titulo, Arrest vpon suspition.* 9.Ed.4.28.

Also euery man may arrest such as apparantly goe about to commit any felony, and may imprison them. 9.Ed.4.28. Neaham.

Also, vpon Hue and crie, for goods stollen (*sc.* for a horse or bullockes, &c. of such a colour, &c.) If *A.* be taken driuing or leading &c. such a horse, or such bullocke, or hauing such other stollen goods about him, though he be a man of good name and credit, yet euery man may apprehend and stay *A.* hereupon, and may deliuer him to the constables, by them to bee set in the stockes, or safely kept, vntill they can carry him before a Iust. of peace, that so he may be deliuered by course of law. 20.Ed.3.29. 5.El.4

If any man shall bee dangerously hurt in an affray, euery man may arrest and imprison the offendor, &c. what euery priuat man may further doe in an affray. See before, *tit. Affray.*

Euery man knowing of any that keepeth, or vseth any Cunne, &c. contrary to the statute, may arrest them, and bring them to the next Iustice of peace, &c.

Night-walkers, being strangers, or suspected persons, watchmen may arrest them, and may stay them till the morning, &c. see hereof *tit. Watch, antea.* Yea, euery man may arrest such nightwalkers, for it is for the good of the Common wealth. *P.R.* 10.

By officers. The Sheriffe, Bailiffs, Constables, and other the Kings officers may arrest and imprison offendors, in all cases where a priuate person may (and without any Writ or Warrant.)

Where a Constable may arrest one &c. see hereof, *antea tit. Conseruators of peace, Arrest, Affray, & Forcible Entry.*

A Constable being informed of a lewd man and woman that are together in incontinency, may take with him so many of his neighbours as he will, to arrest the said man and woman to finde sureties for their good behauiour. 1.*H.*7.7.13.*H.*7.10.

The Iust. of peace may arrest and imprison offenders in all cases where a priuate person or a Constable may.

If one commeth before the Iustice, vpon his Warrant for the peace, good behauiour, or for a Riot or the like, the Iustice needeth not to demaund suretie of him, but may commit him, if he doe not offer it.

Also the Iustices of peace may imprison the offenders against diuers penall lawes, as namely such as keepe common Alehouses without

without licence; Offendors for vnlawfull Games, Riotters, ſuch as ſhall make any forcible Entries, or holdings of poſſeſſions, &c. See for theſe before vnder their particular titles.

Whereſoeuer the Iuſtice of peace hath power, or authoritie giuen him by any Statute, to binde ouer any man, or to cauſe a man to doe any thing; If ſuch perſon (being in his preſence) ſhal refuſe to bee bound, or to doe ſuch thing, it ſeemeth ſuch Iuſtice may ſend ſuch perſon to the Gaole, there to remaine till hee ſhall performe the ſame. See hereof *antea tit. Recogniſance.*

In what caſes the Kings Officer may breake open a mans houſe, for to arreſt an offendor: ſee hereof *tit. Forcible Entrie.*

All men being required, ought to aſſiſt the Kings Officers, to purſue and arreſt offenders againſt the peace, &c.

2. Ed 4. 6. 21. H. 7. 39. If the partie againſt whom any lawfull Warrant is graunted, ſhall make reſiſtance, or ſhall make an aſſault vpon the Officer, The Officer may iuſtifie the beating and hurting of him, and may alſo impriſon him in the ſtockes for the ſame. But if the partie reſiſteth or flieth, before hee bee arreſted, the Officer can not iuſtifie the beating of him. 2. *Edward.* 4. 7. *a. Br. Treſpaſſe.* 296. *Reſiſt.*

5. H. 4. 10. P. Priſon. 1. None ſhall be impriſoned by any Iuſtice of peace, but only in the common Gaole, by the Stat. of 5. *H.* 4. *Impriſonmẽt, the place.*

Co. 9. 119. b. And therefore Iuſtices of peace cannot commit felons to any of the Counters in London, nor to other priſons which bee no common gaoles, nor make a goale of their owne houſes.

And yet Iuſtices of peace may commit to the ſtocks ſome offenders againſt certaine penall Statutes; As townſmen tipling in alehouſes, &c. See hereof *antea tit. Alehouſes.*

Perſons refuſing to worke in Hay and Harueſt time. See *antea tit. Labourers.*

And in ſome caſes the Iuſtice may commit an offendor to ſafe cuſtody by his diſcretion. *Vide antea tit. Preachers.*

Lamb. 136. Cromp. 169. The Sheriffe or Gaoler may impriſon a Felon, or other Priſoner in their owne houſe, or in the common Gaole at their pleaſure.

20. Ed. 4. 6. 22. Ed. 4. 35. 3. H. 49. The Conſtable, (or other ſuch Officer) cannot impriſon any man in his houſe (as it ſeemeth) but in the ſtockes, and that not aboue ſuch a reaſonable time, as hee may prouide conuenient ayde ſafely to conuey the Priſoner to the Iuſtice, or Gaole.

If a man commit felony in one Countie, and bee arreſted for the ſame in another countie, he ſhall be impriſoned in that Countie where he is taken. *Vide antea tit. Felony.*

The

The Conſtable or other Officer purſuing a felon into another County, takes him there; the felon ſhalbe committed to the gaole of the Countie where hee is taken: For the Officer being out of his Countie, hath no more authoritie then a priuate man. *Vide antea tit. Acceſſaries & Felony.*

Alſo if the Conſtable (or other Officer) ſhall ſee an affray, and he comming to arreſt him, the affraiors do flie into another countie, The Officer (as euery other priuate perſon) may purſue them into the other countie, and may ſtay or arreſt them there; but the Officer cannot bring them out of that Countie, but muſt carie the affrayors before ſome Iuſtice of Peace of the ſame Countie where they were taken &c. But if the affray be in one Towne, and the affrayors doe flye into a Franchiſe or Libertie within the ſame Countie, the Officer may purſue them, and take them out of the Franchiſe, by freſh ſuit. *Vide antea tit. Affray.*

But if the Conſtable hath arreſted one vpon a warrant from a Iuſtice of Peace, and after the arreſt the partie eſcapeth (of his owne wrong) and flyeth into another Countie, the Conſtable may purſue and take him in the other Countie by freſh ſuit, and bring him before the Iuſtice of peace vpon whoſe warrant he was firſt arreſted, as it ſeemeth: See *Cromp.* 172. 173. *& antea tit. Felony by Statute.* See 2 Ed. 4. 6. B. Treſp. 296.

If a priſoner that is taken in execution ſhall make an eſcape of his owne wrong, and ſhall flye out of ſight, and into another Countie where the Sheriffe hath no power, yet the Sheriffe &c. vpon freſh ſuite, may take him againe in any other Countie, and he ſhall be ſtill ſaid to be in execution; yea without freſh ſuit, the Sheriffe, &c. may take him againe, and keepe him vntill hee hath agreed with him, otherwiſe if the eſcape were by the conſent of the Sheriffe, &c. *Co.* 3. 52.

Now the conueying of priſoners to the Gaole, muſt bee at the proper charge of the priſoners, if they haue meanes or abilitie thereto, otherwiſe it muſt bee at the charge of the towne where they are taken. 3. Iac. 22 p. 10. P. Priſon. 7. 8.

And if a man bee arreſted for felony, and the Conſtable ſhall carrie him to the Gaole, and the Gaoler will not receiue him, the Conſtable muſt bring him backe to the Towne where hee was taken, And that Towne ſhall bee charged with the keeping of him vntill the next Gaole deliuery, by the opinion of the Booke. 10. *H.* 4. 10. H. 4. 7.

But the Gaoler denying to receiue a felon by the deliuery of any conſtable or townſhip, or taking any thing for receiuing ſuch, ſhalbe puniſhed for the ſame by the Iuſtices of Gaole deliuery. P. Priſon. 6.

When

Co.8.119. Plo.17.b

When a ſtatute doeth appoint impriſonment, but limits no time when the offendor ſhall be impriſoned, then he is to bee impriſoned preſently; as in caſe of a force, the Iuſtice of peace vpon view thereof, ought to commit the offenders preſently. *The Time.*

Cromp.171.

Alſo when a ſtatute doeth appoint impriſonment, but limits no time how long; there the priſoner muſt remaine at the diſcretion of the Court.

Where a ſtatute doeth ordeine, that an offendor ſhall be impriſoned at the Kings pleaſure. *Vide antea tit. Bailement.*

Where a Statute ordeineth that a priſoner ſhall not be deliuered without the Kings ſpeciall commandement, and that vpon a fine to bee made to the King; who may aſſeſſe the ſame fine, and deliuer him: ſee 18.*H.*8.1.

But impriſonment to be inflicted by the Iuſt. of peace, almoſt in all caſes, except for felony or higher offences, is but to reteine the partie, vntil he hath made fine to the King for his contempt or offence. And therefore if he ſhall offer to pay his fine, or ſhall find ſureties by Recognizances to pay it, hee ought to bee deliuered preſently. 2.*Mar.*1. B. Impriſ.100.

Now for the manner of Impriſonment, it ſeemeth generally in all caſes where a man is committed to priſon (be it for felony, or vpon an execution, or but for a treſpaſſe, or other offence) euery Gaoler ought to keepe ſuch his priſoner, *in ſalua & arcta cuſtodia*; *Salua, ſc.* that hee ought to bee impriſoned ſo ſurely, as that hee can not eſcape: *Arcta*, in reſpect that hee ought to bee kept cloſe, without conference with others, or intelligence of things abroad. *The Manner.*

Co.8.100. & 9.87.

And therefore if the Gaoler ſhall licence his priſoner to goe abroad for a time, and then to come againe; Or to goe abroad with a keeper, though he come againe, yet theſe are eſcapes; And if the priſoner were in for felony, this is fineable in the Gaoler at the leaſt, if it be not felony; And if the priſoner were in vpon an execution, this is ſo penall to the Officer, as that he ſhall bee charged for the debt; And if the priſoner were in but for a treſpaſſe, yet the officer is fineable; For impriſonment was ordeined for a puniſhment of offendors, and in terror of all others, *vt pœna ad paucos, metus ad omnes perueniat. Vide antea tit. Felony by ſtatute.*

Alſo (by the law) thoſe which are in execution, ought not to go at libertie within the priſon, nor abroad with their keeper, 24.*H.*8 much leſſe in caſes of felony, or of higher offences.

Dyer.249. Co.3.44.

Alſo by the Statute of Weſtminſter, 2.*cap.*11. Accomptants, and ſuch as are in execution, the Sheriffe or Gaoler, may put irons or fetters vpon them: And yet if the Gaoler ſhal impriſon a man

Co. ibidem. F. Accompt.2.

ſo

ſo ſtreightly by putting him in the ſtockes, or putting more yrons vpon him then is needful, or keepeth his victuall from him, whereby the priſoner becommeth decrepit, lamed, or otherwiſe diſeaſed, he ſhall haue an action of the caſe againſt the Gaoler. Lit. 99. b.

Alſo the Conſtable or other ſuch officer, that ſhall impriſon in the ſtockes any offender, for felony or ſuſpition therof, may lock the ſtockes, and if need bee, may alſo put yrons on him as it ſeemeth; And when hee conueyeth him to the Gaole, or to the Iuſtice, may pinion him, or otherwiſe make him ſure, ſo that he can not eſcape.

It ſeemeth by *Britton, fol.* 17. that by the Common law (before the Statute of Weſtminſter, 2.) None ſhould haue yrons put on them, but ſuch offendors as were taken for felony, or treſpaſſers in parkes. But the words of the ſtatute of Weſtminſter, 2. *cap.* 11. are generall, *quod Carceri manucipentur in ferris*, which word, *Carceri*, ſeemeth to ſignifie any perſons impriſoned for any cauſe, (or any perſons worthy of the priſon) and is not to bee reſtreined to Accomptants onely. See *Co.* 3. 44. Kit. 69.

Alſo by the ſtatute 7. *Iacobi Regis*, All Rogues, vagabonds, ſturdy beggers, and other idle and diſorderly perſons, ſent to the houſe of Correction, may by the maſt. of ſuch houſe) be puniſhed by putting fetters, or giues vpon him. 7. Iac. 4.

Poſſe

Posse Comitatus.

WHere the Iustice of Peace, Sheriffe, or other officer, is inabled to take the power of the Countie, it seemeth, they may commaund, and ought to haue the ayd and attendance of all Knights, Gentlemen, Yeomen, Husbandmen, Laborers, Tradesmen, Seruants and Apprentices, & of all other such persons, being aboue the age of fifteene yeres, and that are able to trauell.

Lamb. 309.

But women, Ecclesiasticall persons, and such as be decrepit or diseased of any continuall infirmitie, shall not be compelled to attend them.

And in such cases, it is referred to the discretion of the Iustices of Peace (or Sheriffe, &c.) what number they will haue to attend vpon them, and how and after what maner they shall be armed, weaponed, or otherwise furnished.

But it is not iustifiable for the Iustices of Peace, Sheriffe, or other officer, to assemble *Posse Comitatus*, or raise a power or assembly of people (vpon their owne heads) without iust cause. *Vide antea titulo Ryotts.*

What persons may take Posse Comitatus, *and in what cases.*

ANy Iustice of Peace, or Sheriffe, may take (of that Countie where he is a Iustice, or Sheriffe) anie number that they shall thinke meete, to pursue, apprehend, arrest, and imprison Traytors, Murderers, Robbers and other felons; or such as do breake, or goe about to breake, or disturbe the Kings peace; and euerie man (being required) ought to assist and ayde them. *Vide ant. tit. Forcible entrie, and Felonie.*

The Iustices of Peace (and the Sheriffe, or vnder Sheriffe) may take *Posse Comitatus* for the suppressing of Ryots; and all sorts of persons (being able and required) ought to assist them therein. *Vide antea ti. Ryotts.*

14. H. 7. 8.

Yea any one Iustice of Peace may take the power and ayde of

the Countie to suppresse Ryotters, and needs not to tarrie for the comming of another Iustice, or of the Sheriffe.

Also in cases of Forcible Entrie, any Iustice of Peace may take *Posse Comitatus*, to remoue such persons as by his view, or by Inquisition taken before him, shall be found to haue made forcible entries (into other mens possessions) or to deteyne them with force. *Vide antea tit. Forcible Entrie.*

Also the Sheriffe, or other officer, vpon any lawfull Warrant, for the apprehending of any Popish Recusant &c. may take *Posse Comitatus &c.* See the Statute 3. Iac. cap. 4. P. Recus. 52.

The Sheriffe, vnder Sheriffe, or Bayliffe &c. (if neede be) may by the Common Law, take the power of the County (what number they shall thinke good) to execute the Kings Processe or Writ; be it a Writ of Execution, *Repleuin*, *Estrepment*, *Capias*, or other Writ, it being the Kings commaundement. (See also the Statutes Westminster 1. 17. Westminster 2. 39.) And such as shall not assist them therein (being required) shall pay a fine to the King. 3. H. 7. 1, 10. Co. 5. 115. P. Distr. 4. P. Retor 5. Br. Fine. p. 37.

The Sheriffs Baily, to execute a Repleuy, took with him three hundred men armed (*modo guerino, &c.*) with Brigands, Iacks, and Gunnes; and it was holden lawfull: for the Sheriffes officer hath power to take assistance, aswell as the Sheriffe himselfe, for that all is one office and one authoritie. 3. H. 7. 1. Br. Tresp. 266.

A man demands the P. in the Chancery against a great Lord, and hath a *Supplicauit* directed to the Sheriffe, there, if neede shall be, the Sheriffe may take *Posse Comitatus*, to ayde him to arrest such a Lord, &c. *Vide antea tit. Suertie for the Peace.*

So it seemeth, if a *Supplicauit* be directed to a Iustice of peace; the Iustice of Peace, or the officer to whom the Iustice of Peace shall make his Warrant in this behalfe, (vpon resistance made) may (if neede be) take *Posse Comitatus* to ayde him to arrest the partie: *Quia quando aliquid mandatur, mandatur & omne per quod peruenitur ad illud. Co. 5. 115.*

But euery Sheriffe is enabled besides by his Writ of assistance, whereby he hath commaundement (vnder the great seale) to all Archbishops, Dukes, Countees, Barons, and all other the Kings subiects, within the same County, to be ayding to him in whatsoeuer belongeth to his office, &c.

The Sheriffe may take *Posse Comitat'*, to apprehend felons, &c Or disturbers of the Peace. *Vide antea tit. Forcible Entrie.*

So he may take *Posse Comitatus* to execute the Precept of the Iustice of Peace. *Ibidem.*

The

3.H.7.10. 13.H.7.10. Br. Trespasse 432.

The Constable (of a Towne) vpon a felonie committed, or vpon any Affray, or the like, may take the ayde of his neighbors, or other persons being present, to apprehend the Felons, or to cause the peace to be kept, (and to carrie the offendors before the Iustice, &c.

38.E.3.8.

One hath hurt another, whereby hee is in perill of death, the Constable may take power or ayde, to arrest him, &c.

So may the Constable take aide, for the executing of the Iustices Warrant directed to him.

Co.11.82.

Euery man may assemble his friends and neighbors, to defend his person, &c. (being in his house) against violence, &c. but not to goe abroad with him to a Fayre or Market, &c. *Vide antea titul' Forcible Entrie.*

Certaine aduices to the Iuſtices of Peace.

I Thought it not amiſſe here ſhortly to admoniſh the Iuſtices of Peace againe, of ſome few things mentioned before, for their better memorie.

1 Firſt, that they exerciſe not the office of a Iuſtice of Peace, before they haue taken the Oath of their Office, and the Oath of Supremacie. *Vide antea titul. Iuſtices of Peace.*

2 That they execute not this their office in their owne caſe, but to cauſe the offendor to be conuented before ſome other Iuſtice; *quia iniquum eſt aliquem ſui rei eſſe Iudicem. Co.* 8. 118. And ſome late Statures haue taken ſpeciall care to preuent this, as you may ſee *hic tit. Treſpaſſe, &c.* See Cromp. fol. 68.

And yet if the Iuſtice ſhall deale in his owne caſe, it ſeemeth good and iuſtifiable in diuers caſes; as, when a Iuſtice of Peace ſhall be aſſaulted, or (in the doing of his office eſpecially) ſhall be abuſed to his face, and no other Iuſtice of peace preſent with him, then it ſeemeth he may commit ſuch an offendor vntill he ſhall finde ſuerties for the Peace, or good behauiour (as the caſe ſhall require.) And the ſaid Iuſtice in ſuch caſe may himſelfe bind the offendor, and take his ſecuritie: but if any other Iuſtice of P. ſhall be preſent, it were fitter to deſire his ayde.

3 That they be carefull for the execution of the Stat. of Ryotts, *Vide antea tit. Ryots.*

If vpon their Enquirie of a Ryott, the truth cannot be found, by reaſon of any maintenance, &c. that they certifie the ſame within one moneth.

4 That vpon a Forcible Entrie, they make no Reſtitution, without Enquirie. *Vide antea tit. Forcible Entrie.*

5 That vpon notice of any Treaſon; or of any Seminaries, &c. or of any *Agnus Dei*, &c. offered, they diſcouer the ſame to ſome of the Priuie Councell. *Vide tit. Treaſon.*

6 That

6 That they be circumſpect in bayling of Priſoners; *viz.* that they neyther denie it to ſuch as are bayleable, nor yeelde it where it is not grauntable. *Vide hic Baylement.*

7 If any felonie be committed, and one is brought before the Iuſtice of peace vpon ſuſpition for the ſame, though it ſhall appeare to the Iuſtice, that the priſoner is not guiltie of that offence, or that it is not felonie of death, yet he may not ſet him at libertie, but ſo, as he may come to his triall. *Vide antea tit. Felonie by Statute, and Euidence againſt Felons.*

8 That all Recogn. taken by them, be in the Kings name.

9 That all Recogn. taken by them, be certified at their next Quarter Seſſions, or Gaole deliuerie.

10 That they meet at euerie Eaſter Seſſions at the leaſt, *vide* 5. *Eliz. cap.* 4. *P. Iuſt.* 67. And yet their preſence and attendance at euerie generall Seſſions is verie requiſite.

11 That their examinations taken concerning the miſ-entring of Plaints in Countie Courts; or the defaults of gathering the Shire Amerciaments, be certified into the Exchequer &c. *Vide antea tit. Sheriffes.*

12 That ſuch offences as the Surueyors of High-wayes ſhal preſent to them, they againe preſent at their next Quarter Seſſions. *Vide antea tit. High-wayes.*

13 That the Oathes taken by them vpon the ſubmiſſion of any Recuſant, be certified at their next Quarter Seſſions. *Vide antea tit. Recuſants.*

14 Alſo that they doe Iuſtice and giue remedie to euery partie grieued, in any thing that lyeth within their power, to heare, determine, or execute, and that without reſpect of perſons, and according to the Lawes and Statutes of this Realme. *Vide antea tit. Iuſtices of Peace.*

Note, that all theſe former matters are penall to the Iuſtices of Peace, if they ſhall offend in any of them, and therefore it is likely they will be the more carefull therein. But there are certaine other things principally tending to the publike good, and lately commended from his Maieſtie (by the Iudges of Aſſiſe) to the care of the Iuſtices of Peace: in all which the Iuſtices of P. are to imploy alſo their ſpeciall care and diligence; and they are ſhortly theſe tenne Articles following:

1 Alehouſes; the abuſes there to be reformed, and ſuch as be vnlicenſed, to be ſuppreſſed.

2 High-wayes, and Bridges, to be amended.

3 Hue and Cry, and freſh ſuite, to bee duely made, and purſued

ſued after Robbers, and other Felons.

4 Laborers: *ſc.* idle perſons meete to ſerue, to be compelled to goe to ſeruice.

5 Poore: their children to be placed Apprentices; ſuch as are able of bodie, to be holden or ſet to worke.

6 Recuſants: firſt Popiſh Recuſants (eſpecially ſuch as haue beene reconciled to the Pope, or drawen to the Popiſh Religion, ſince the Gunpowder treaſon; for theſe are by his Maieſtie accompted moſt dangerous:) that theſe be certified into the Kings Bench, and further to be dealt withall (by the Iuſtices of Peace) according to the ſeuerall Statutes in that behalfe made.

Alſo negligent Recuſants, which ſhall not reſort euerie Sonday to Church; that ſuch be puniſhed according to the Statute: for the firſt meanes to bring men to God, is to bring them to Church.

7 Rogues and Vagabonds, to be duely puniſhed.

8 Houſes of correction, to be mainteyned.

9 Watch to be duely kept.

10 Weights and Meaſures, the abuſes therein to bee reformed.

Further, the Iuſtices of Peace are to be carefull that they ſuffer not the King to be diſaduantaged, where it lieth lawfully in their power to preuent it, *vide Lambt.* 521.

Alſo that they remember, how that they exerciſe not the iudgments of men onely, but of God himſelfe (whoſe power they do participate, and who is alwayes preſent with them) and therefore muſt take heed that in all their Actions they ſet God continually before their eyes.

But for as much as moſt of the buſines of the Iuſtices of peace (out of Seſſions) conſiſteth in the execution of diuers Statutes committed to their charge, which Statutes cannot be ſo ſufficiently abridged, but that they will come ſhort of the ſubſtance and bodie thereof; therefore it ſhall be ſafeſt for the Iuſtices of Peace not to relie ouer-much vpon theſe ſhort collections thereof, but to haue an eye to the Abridgement of Statutes, or rather to the booke of Statutes at large, and thereby to take their further and better directions for their whole proceedings: for (as Sir *Edw. Coke* obſerueth) Abridgements are of good and neceſſarie vſe to ſerue as Tables, but not to ground any opinion (much leſſe to proceed iudicially) vpon them: *Ideo*, ſaith he, *ſatius eſt petere fontes quam ſectari riuulos. Co.* 10. 117. b.

And laſtly, for the better encouragement of Iuſtices of Peace, Conſtables,

Conſtables, and other officers, who (by cauſeleſſe ſuits commenced by contentious perſons againſt them for executing their offices) haue lately beene diſcouraged from doing their offices (with that courage, care and diligence, which is required at their hands,) Now for their eaſe in pleading, they are by the Statute 7. *Iacobi*, allowed to pleade the generall iſſue of Not guiltie, and to giue the ſpeciall matter in euidence, and for their wrongfull vexation double coſtes.

7. Iac. cap. 5.

Warrants

Warrants and Preſidents.

THe Warrants of the Iuſtices of peace, may be ſtyled and made after diuers manners, As

1 Firſt, in the name of the King; and yet the *Teſte* may be vnder the name of the Iuſtice (or Iuſtices) of Peace, that graunt them out:

2 Or they may be ſtyled and made onely in the names of the Iuſtices:

3 Or they may be made without any ſuch ſtyle, and onely vnder the *Teſte* of the Iuſtices of Peace; or onely ſubſcribed by the Iuſtice, as followeth.

In the Kings Maieſties name.

Cantebr. IAMES by the grace of God, &c. To our Sheriffe of our Countie of Cambridge, the high Conſtables of the Hundred of Radfeild, the petie Conſtables of the Towne of Balſham, and to all and ſingular our Bayliffes, & other miniſters in the ſaid Countie, aſwell within Liberties as without, Greeting. Foraſmuch as A.B. of &c. hath come before Sir *Edward Peyton* Knight and Baronet, one of our Iuſtices of peace within the ſaid County, and hath &c. (concluding it in the Iuſtices name, as thus) Witneſſe the ſaid *Edward Peyton*, at Iſleham, the day of December, &c. The Style. The Teſte.

Note, that whereſoeuer the Warrant is made in the K. name (as before) there, it ſeemeth the Warrant ought to be directed to all miniſters, aſwell within Liberties as without, for that the King is made a partie: and ſo it may be done in all other Warrants (eſpecially for felonie, or for the peace, or good behauior, &c.) becauſe it is the ſeruice of the King, which alwaies carieth in it a *Non omittas propter aliquam libertatem. Vide antea tit. Proceſſe.*

Or thus, in the name of the Iuſtice himſelfe.

Cantebr. MYles *Sandys* Knight and Baronet, one of the Iuſtices of the Peace of our ſoueraigne Lord the K. within the ſaid county;

To

To the Sheriffe of the ſaid Countie, to the (Bayliffe or) Conſtables of the Hundred of &c. to the petie Conſtables of the towne of *F.* within the ſaid Hundred, and to all other the faithfull Miniſters and officers of our ſaid Soueraigne Lord within the ſaid Countie, and to euerie of them, Greeting. Foraſmuch as &c. Giuen vnder my hand and ſeale at the day of December, &c.

Or elſe they may bee directed to the petie Conſtables onely, thus;

To the Conſtables of (the Towne of) Weſtwratting, and to eyther of them.

FOraſmuch as *A.B.* of, &c. hath come before me, &c. Giuen vnder my hand and ſeale at the day of &c. *Canterbr.*

Myles Sandys.

A Warrant for the Peace.

IAMES by the grace of God, &c. To our Sheriffe, &c. For as much as *A.B.* of &c. Yeoman, hath perſonally come before Sir *Oliuer Cromwell* Knight, one of our Iuſtices of the Peace within the ſaid Countie, and hath taken a Corporall Oath, that hee is afraid that one *C. D.* of in the ſaid Countie Yeoman, will * beate, wound, maime, or kill him, or burne his houſes; and hath therwithall prayed ſuertie of the Peace againſt the ſaid *C. D.* Therefore we commaund and charge you iointly and ſeuerally, that (immediatly vpon the receipt hereof) you cauſe the ſaid *C. D.* to come before the ſaid Sir *Oliuer Cromwell*, or ſome other of our Iuſtices of the ſame Countie, to finde ſufficient ſuertie and mainpriſe, as well for his appearance at the next Quarter Seſſions of our Peace to be holden at C. in the ſaid Countie; as alſo for our Peace to be kept towards vs, and all our liege people, and chiefly towards the ſaid *A.B.* that is to ſay, that hee the ſaid *C. D.* ſhall not doe, nor by any meanes procure or cauſe to be done, any of the ſaid euills, to any of our ſaid people, and eſpecially to the ſaid *A.B.* And if the ſaid *C. D.* ſhall refuſe thus to doe, that then immediately (without expecting of any further Warrant) you him ſafely conuey, or cauſe him to be ſafely conueyed to our next *Canterbr.*

* Any one of theſe cauſes is ſufficient.

next prison in the said Countie, there to remaine vntill he shall willingly doe the same: (so that hee may be before our said Iustices, at the said next generall Sessions of the Peace to be holden at Cambridge aforesaid, then and there to answer vnto vs for his contempt in this behalfe.) And see that you certifie your doings in the premisses to our said Iustices at the said Sessions, bringing then thither this Precept with you. Witnesse the said *Oliuer Cromwell*, at aforesaid the fourth day of August, &c.

Or thus, in the name of the Iust. himselfe, Mutatis, mutandis.

Cantebr. THomas Iermy Knight, one of the Iustices of the Peace of our Soueraigne Lord the King, within the saide Countie, to the Sheriffe, &c. Greeting. For as much as A. B. &c. hath personally come before me, and hath taken a corporall oath &c. These shall be therefore on the behalfe, and in the name of our said soueraigne Lord, to commaund you iointly &c. to come before me, or some other of his Maiesties said Iustices of the Peace, in the said Countie &c. Giuen vnder my seale at aforesaid, &c. For the peace.

To the Constables of, &c. and to eyther of them.

Cantebr. FOrasmuch as A. B. the wife of W. A. of your said Towne Laborer, hath required suertie for the Peace against T. B. of your said Towne Butcher, and withall hath taken her corporall oath before me, that shee requireth the same not for anie priuate malice, hatred, or euill will, but simply that she is afraid of her life, or the hurting or maiming of her bodie, or the burning of her houses: These are therefore to will and require you, and in his Maiesties name to charge and commaund you, that immediately vpon the sight hereof, you or one of you, * require the said T. B. to come before me, or some other of the Kings Maiesties Iustices within the said Countie, to finde sufficient suerties, aswell for his appearance at the next generall Quarter Sessions of the Peace to be holden for this Countie, as also that the said T. B. shall in the meane time keepe the Kings Maiesties Peace, aswell towards his said Maiestie, as towards all his liege people, and especially towards the said A. B. And if he shall refuse so to doe, that then immediately you doe conuey the said T. B. or cause him to be conueyed vnto the Kings Maiesties Gaole at the Castle of Cambridge, For the Peace.

* See before, tit. Arrest.

Cambridge, there to remaine vntill hee ſhall willingly doe the ſame. And ſee that you certifie your doings in the premiſſes to the Iuſtices at the ſaid Seſſions; and haue you there this Warrant. Dated at, &c.

A Warrant for the Peace vpon a Supplicauit.

I *Iohn Cotton* Knight, one of the Iuſtices of the Peace of our ſoueraigne Lord the Kings Maieſtie within the Countie of Cambridge, To the Sheriffe of the ſaid Countie, the High Conſtables of the Hundred of R. the petie Conſtables of the Towne of B. and to all and ſingular the Kings Maieſties Bayliffes, and other miniſters, aſwell within Liberties as without in the ſaid Countie, and to euerie of them, Greeting. Know ye that I haue receiued the commaundement (or Writ) of our ſaid ſoueraigne Lord (in theſe words, reciting the whole Writ of *Supplicauit*; or onely reciting the effect of the *Supplicauit*, thus to compell A. B. of &c. to finde ſufficient ſuertie for his Maieſties Peace, by him to be kept towards &c.) And therfore on the behalfe of our ſaid ſoueraigne Lord, I commaund and charge you iointly and ſeuerally, that immediately vpon the receipt hereof, you cauſe the ſaid A. B. to come before me at my houſe in Cheueley, to finde ſufficient ſuertie and mainpriſe for the peace, to be kept towards our ſaid ſoueraigne Lord, and all his liege people, and eſpecially towards the ſaid C.D. And if the ſaid A. B. ſhall refuſe thus to doe, that then you him ſafely conuey or cauſe to be ſafely conueyed, to his Maieſties Gaole at the Caſtle of Cambridge (or to the next Gaole of his Maieſtie in the ſaid Countie) there to remaine, vntill that hee ſhall willingly do the ſame; ſo that he may be before the Iuſtices of the Peace of our ſaid ſoueraigne Lord within the ſaid County, at the next general Seſſions of the peace, to be holden for the ſaid Countie, there to anſwer to our ſaid ſoueraigne Lord for his contempt in this behalfe. And ſee that you certifie your doings in the premiſſes, to the ſaid Iuſtices at the ſaid Seſſions, bringing then thither this Precept with you. Yeouen at Cheueley aforeſaid vnder my hand and ſeale, the fourth day of &c. *Cantebr.*

The Returne of this Writ, and Certificate of the Iuſtices doings heerein, ſee hereof before, in the title of *Suertie for the Peace*.

A Warrant for the good Behauior.

Cantebr. FOraſmuch as A.B. of your ſaide Towne, is not of good name or fame, nor of honeſt conuerſation (but * an euill doer, a Ryotter, Barretter, and perturber of the Peace of our ſaid Soueraigne Lord) as we are giuen to vnderſtand by the complaint of ſundrie credible perſons. Therefore on the behalfe of our ſaid Soueraigne Lord we commaund you, and euerie of you, that you cauſe the ſaide A.B. to come before vs, or ſome other of our fellow Iuſtices, to finde ſufficient ſuertie and mainpriſe, as well for his good abearing towards our ſaid Soueraigne Lord and all his liege people, vntill the next Quarter Seſſions of the Peace to be holden in the ſaid Countie, as alſo for his appearance then and there. And if hee ſhall refuſe ſo to doe &c. (as in the Warrant for the Peace.)

* Any one of theſe is ſufficient.

Or thus.

FOraſmuch as we haue beene credibly informed that S. W. of your Towne, &c. is a man of euill Behauior, one that daily moueth diſcord, ſtrife, and diſſention among his neighbours, and a common perturber of his Maieſties peace. Theſe are therefore in the Kings Maieſties name to commaund you &c.

Another Warrant for the good Behauior.

Cantebr. IOhannes Peyton *Miles, et* Willielmus Woodhouſe *Miles Iuſticiarij Domini Regis nunc ad pacem in Comitatu prædict' conſeruand' aſſignat' vic' Com' prædict', Necnon omnibus et ſingulis Balliuis, Conſtabular'; cæteriſq; dicti Domini Regis miniſtris tam infra libertates quam extra in eodem com', ſalutem. Quia dat' eſt nobis intelligi per relationem et Teſtimonium multorum fide dignorum com' prædict', quod A. B. de C. in com' prædict' gener', et R. A. de eadem Yeoman, * non ſunt bonor' nominis et famæ, nec conuerſationis honeſtæ, ſed malæ diſpoſitionis, barratores & pacis dicti Domini Regis perturbatores, ita quod veriſimilis ſit murdrum, homicidium, lites, diſcordias, & alia grauamina, & damna inter legios dicti Domini Regis, de corporibus ſuis, prætextu præmiſſorum indies oriri: Ideo ex parte dicti Domini Regis, vobis & cuilibet veſtrum præcipimus, quod non omittas propter aliquam libertatem in com' prædicto, quin attachiatis, ſeu vnus veſtrum*

* *Sunt malæ fame, & malegeſtus, is ſufficient, Lib. Intr. 385.*

veſtrum attachiat præfatos A. B. & R. A. Ita quod habeat' eos coram nobis ſeu aliis ſociorum noſtrorum Iuſticiar. dicti Domini Regis ad pacem &c. quam cito capi poſſunt; (vel coram Iuſticiar' dicti Domini Regis ad pacem in Comitatu prædicto conſeruand', ad proximam generalem Seſſionem pacis in eodem Comitatu tenend') ad inueniend' tunc coram nobis (vel dictis Iuſticiarijs) ſufficient' ſecuritatem de ſe bene gerend' erga dictum Dominum Regem, & cunctum populum ſuum, iuxta formam Statut' inde edit' & prouiſ. ſub certa pœna eis per nos (vel per præfat. Iuſticiar') tunc imponend', Et hoc nullatenus omittatis periculo incumbente. Et habeas coram nobis, vel dictis Iuſticiar' apud Seſſiones prædictas hoc Præceptum. Teſtibus nobis prædictis I. P. & W. W. vltimo die Iunij. Anno regni dicti Domini noſtri Iacobi Dei gracia Angliæ, &c.

A generall Warrant for Miſdemeanor.

To the Conſtables of &c.

THeſe are to will and require you, and in his Maieſties name ſtreightly to charge and commaund you, and either of you, That imediately vpon the ſight hereof (or vpon Munday next by eight of the clocke in the forenoone) you bring *I. H.* of your ſaid Towne, Butcher, before me, to anſwere vnto ſuch matters of miſdemeanor, as on his Maieſties behalfe ſhall bee obiected againſt him: And heereof faile yee not at your perill. Dated at &c. *Cantebr.*

Another for Miſdemeanor.

THeſe are to will and require you, &c. That immediately vpon the ſight heereof, you attach the bodies of *A. B.* and *C. D.* &c. (or of all and euery the perſons hereunder named) And to bring them foorthwith before mee, to anſwere vnto ſuch matters of miſdemeanour, as on his Maieſties behalfe ſhall be obiected againſt them. And hereof faile ye not at your perills. Dated &c. *Cantebr.*

To attach one for Felonie.

Cantebr. FOraſmuch as complaint hath been made vnto me, by *C. D.* that of late hee hath had certaine goods felonioully taken from him; And that hee hath in ſuſpition one *R. G.* of your ſaid Towne, Theſe are therefore to will and require you, &c. preſently vpon the receipt hereof to attach the body of the ſaid *R. G.* and thereupon to bring him before mee, to anſwere vnto the premiſſes. And hereof faile ye not at your perils. Dated &c.

Another.

Cantebr. THeſe are to will and require you &c. preſently vpon the receipt heereof, to attatch the body of *A. B.* and to bring him before me, to anſwere vnto ſuch matters of ſuſpition of felonie, as on his Maieſties behalfe ſhall bee obiected againſt him: And hereof faile you not at your perils. Dated &c.

To ſearch for ſtollen goods.

Cantebr. WHereas complaint hath been made vnto me by *N. O.* that of late hee hath had felonioully taken from him certaine goods, and that he hath in ſuſpition diuers lewd and euill diſpoſed perſons within your pariſh. Theſe are to will &c. that immediately vpon the receite thereof, you make diligent ſearch in all ſuch ſuſpected houſes, and places within your pariſh, as you and this complainant ſhall thinke conuenient; And if vpon your ſaid ſearch you find any of the ſaid goods, or other iuſt cauſe of ſuſpition, that then you bring all ſuch ſuſpected perſons as you ſhall ſo finde, before me, to anſwere vnto the premiſſes. And heereof faile you not, &c.

To binde men to giue in euidence.

Cantebr. THeſe are in the Kings Maieſties name, &c. that preſently vpon the ſight heereof, you or ſome of you, doe cauſe to come before mee (or ſome other his Maieſties Iuſtices of peace of this County) the perſons heereunder named, to the end that they and euery of them may be bound to make their perſonal appearance at the next generall gaole deliuery to be holden for this Countie, then and there to teſtifie their and euery of their knowledges, concer-

concerning certaine felonious acts committed by one *A. B.* now a priſoner in the caſtle of C. &c. And hereof faile you not, &c.

A Warrant for one who hath dangerouſly hurt another.

FOraſmuch as I am credibly informed, that I. B. of your Towne, Blackeſmith, hath now lately daungerouſly hurt one T. G. of your ſaid Towne Husbandman, by a blow which hee hath giuen the ſaid T. on the face, and another on the backe, ſo as the ſaide T. is in daunger of death thereby. Theſe are therefore in the Kings Maieſties name ſtreightly to charge and commaund you, That immediately vpon the ſight hereof, you or one of you doe bring the ſaide I. B. before mee (or ſome other his Maieſties Iuſtices of the Peace of this Countie) to finde ſufficient Sureties, as well for his appearance before the Kings Maieſties Iuſtices at the next generall Gaole deliuery to bee holden for this Countie, then and there to anſwere vnto the premiſſes; as alſo that hee the ſaid I. B. ſhall in the meane time keepe the Kings Maieſties peace towards his ſaid Maieſtie, and all his liege people, and eſpecially towards the ſaid T. G. And hereof faile you not at your perils. Dated &c. *Cantebr.*

For the reputed father of a Baſtard childe.

WHereas complaint hath been made vnto mee by K. I. of your ſaid Towne ſinglewoman, that ſhee is (gotten) with childe by one T. S. alſo of your ſaid Towne, Butcher. Theſe are therefore to will and require you, and in his Maieſties name to charge and command you, and either of you, that preſently vpon the receite hereof you attach the body of the ſaid T. S. and thereupon to bring him before me (or ſome other of his Maieſties Iuſtices of the peace for this Countie, to finde ſufficient ſureties, as well for his appearance, at the next generall Seſſions of the peace to bee holden for this Countie, as alſo for his good behauiour towards his Maieſtie, and all his liege people, in the meane time: And hereof faile you not, as you will anſwere the contrary at your perils. Dated at &c. *Cantebr.*

A Warrant for Ouerſeers to giue vp their Accompt.

To the high Conſtables of the Hundred of &c.

THeſe are in the K. Maieſties name to charge and commaund you foorthwith to giue warning to the Churchwardens, and other the Ouerſeers of the poore of euery pariſh within your Hundred, that they perſonally do appeare before vs at Newmarket, at the ſigne of the Greyhound there vpon Tueſday the of next comming, by nine of the clocke in the forenoone of the ſame day, to yeeld vp, and to make a true and perfit account in writing, ſubſcribed with their names or markes, of all ſuch ſummes of money as they haue receiued, or rated and ceſſed and not receiued, for and towards the reliefe of the poore of their ſeuerall pariſhes, and alſo of ſuch ſtocke (to ſet their poore on worke) as is in their hands, or in the hands of any their ſaid poore to worke, and of all other things concerning their ſaid Office; And hereof that they faile not at their and euery of their perills. And further we require you, that you giue warning to the petie Conſtables of euery towne within your ſaid Hundred, that they or one of them bee alſo then and there preſent before vs, to enforme and certifie vs of the names of ſuch other perſons as are meet and fitting to bee Ouerſeers of the poore within their ſeuerall townes for this yeare next enſuing. And heereof faile yee not, &c.

See what they be in the title, Poore.

And this Warrant muſt be vnder the hands and ſeales of two Iuſtices at the leaſt, the one of the *Quorum*. *Vide tit. Poore.*

A Warrant to new officers to take their Charge.

BY vertue of the Statute made in the three and fortieth yeare of the reigne of our late Soueraigne Lady, Queene *Elizabeth*, (intituled, An Acte for the reliefe of the poore) Theſe are to will and require you, whoſe names are heereunder written, that you together with the Church-wardens of your Pariſh for the time being, doe (according to the ſame Statute) take order from time to time, for this yeare to come, for the ſetting to work of the poore within your pariſh; And for the raiſing of a conuenient ſtocke of ſome Ware, or Stuffe, in your Towne to that purpoſe; And for the prouiding of neceſſarie reliefe for ſuch as

be

be lame and impotent amongſt you; And for the placing as apprentices ſuch children whoſe parents are not able to maintaine them. And heereof ſee that you faile not at your perills. Dated &c.

This Warrant muſt alſo be vnder the hands and ſeales of two Iuſtices. *Vide antea tit. Poore.*

A Warrant to diſtreine ſuch as refuſe to pay their Rates for the poore.

To the Churchwardens, and other the Ouerſeers for the poore within the pariſh of W. and to euery of them.

FOraſmuch as wee are credibly informed, that the perſons hereunder named, do refuſe to contribute or pay the ſummes of money hereunder mentioned (vpon their heades) being aſſeſſed and rated vpon them ſeuerally, for and towards the neceſſary reliefe of the poore of your ſaid town, according to the forme of the Statute in that behalfe lately prouided. Theſe are therfore in his Maieſties name to charge and commaund you and euery of you, foorthwith to leuie all and euery the ſaid ſeuerall ſummes of money vnpaid, and all the Arrerages thereof, of all and euery the ſaid perſons ſo refuſing, by diſtreſſe and ſale of the offendors goods, you rendring to the parties the ouerplus that ſhall remain vpon the ſale of the ſaid goods; And this ſhall be your ſufficient Warrant therein. Dated &c. *Vide antea tit. Poore.* *Cantebr.*

Another.

To the Churchwardens, &c.

THeſe are in his Maieſties name to charge and command you and euery of you, preſently to demaund of all and euery the perſons hereunder named, all and euery the ſeuerall ſummes of money hereunder ſeuerally written, or ſet vpon their heades, being aſſeſſed and rated vpon them for and towards the neceſſary reliefe of the poore of your ſaid towne, according to the forme of the ſtatute in that behalfe lately prouided: And if they or any of them ſhall refuſe to pay the ſaid ſeuerall ſummes of money ſo rated vpon them, That then preſently you leuie the ſame *Cantebr.*

by diſtreſſe, and ſale of the offendors goods, rendring to the parties the ouerplus that ſhall remaine vpon the ſale of their ſaid goods. And this ſhall bee your ſufficient Warrant therein. Dated &c.

Theſe two laſt Warrants muſt alſo bee vnder the hands and ſeales of two Iuſtices, &c.

A Warrant for a generall ſearch for Rogues.

Cantebr. THeſe are in the Kings Maieſties name to charge & command you, that you together with the pettie Conſtables of the ſeuerall townes, pariſhes, and Hamlets within your Hundred (taking ſufficient aſſiſtance out of the ſaid townes) doe make a generall priuy ſearch within euery of the ſaid ſeueral townes, pariſhes and Hamlets vpon at night next comming, for the finding out and apprehending of all rogues, vagabonds, & wandring & idle perſons, in or about their ſaid ſeuerall towns, pariſhes or hamlets; and that ſuch as ſhalbe found and apprehended, you doe cauſe them to bee brought before vs the next day vnto L. by nine of the clocke, there to bee by vs * dealt withall according to the laſt Statute in that behalfe prouided. At which time and place wee further require you, together with the ſaid pettie Conſtables to appeare before vs, and there to giue an account and reckoning vpon Oath, in writing, and vnder the hands of the Miniſter of euery ſeuerall Pariſh within your Hundred, what Rogues, Vagabonds, wandring and diſordred perſons haue bene there apprehended, as well in the ſame ſearch, as alſo ſince the laſt aſſembly and meeting that made was for this purpoſe, being vpon or about the day of laſt paſt. And hereof faile you not, &c.

See before in the title of Rogues, what the Iuſt. ſhall do with them.

Note, that all Rogues which ſhall be brought before the Iuſtices vpon ſuch ſearch (after examination taken by the Iuſtices) are to bee whipped by the Conſtables of the Towne, where the Iuſtices ſit (as it ſeemeth) Or from thence are to bee ſent to the houſe of Correction, and to bee conueyed thither by the Conſtables that brought them, and at the charge of the Hundred; which ſeruices impoſed vpon the Conſtables, are ſome cauſe of their neglect of this ſeruice; And therefore I haue ſet downe another courſe and preſident perhaps no leſſe ſeruiceable, which alſo may be performed and done euery moneth, or euery meeting

See the title of Rogues.

meeting of the Iuſtices, if need ſhall ſo require: or if the Iuſtices cannot, or ſhall not meet, yet, it ſeemeth, ſuch warrant may bee granted out by any one Iu. of P. as followeth.

Theſe are in the Kings Maieſties name, to charge and commaund you, that you together with the pettie Conſtables of the townes, pariſhes, and hamlets within your hundred (taking ſufficient aſſiſtance out of the ſaid townes) do make a generall priuy ſearch within euerie of the ſaid ſeueral towns, pariſhes, and hamlets, vpon at night next comming, for the finding out, and apprehending of all rogues, vagabonds, and wandring and idle perſons in or about their ſaid ſeuerall townes, and that ſuch as ſhall be found and apprehended, you doe cauſe them to bee puniſhed in euerie ſeuerall towne or pariſh where they ſhall be apprehended, by the petty Conſtables of euery ſeuerall pariſh reſpectiuely; and by them alſo further to bee conueyed according to the Statute: And if any of the ſaid rogues ſhall appeare to be dangerous or incorrigible, that then you cauſe ſuch to bee brought before me, or any other of his maieſties Iuſt. of peace of this diuiſion, to be further dealt withall according to the ſtatute in ſuch caſes prouided, dated &c. *Cantibr.*

Afterwards any one of thoſe Iu may take the examination of, or profe againſt ſuch dangerous rogue, and finding cauſe, may then ioine with any other Iuſtice of peace of that limit, being of the *Quorum*, and commit ſuch rogue to the houſe of correction, or gaole, although the ſaid two Iuſtices ſhall not meete together about it.

39 El. 3. 1. Iac 7. P. Vag. 4.

A warrant for a fugitiue ſeruant.

IOhannes Cuts *miles, vnus Iuſticiar. domini regis &c. Balliuis Cantebr. hundred' de B. & T. H. Conſtabular. de M. in comitatu prædict' ſalut'. Quia E. L. retentus in ſeruic' I. T. de M. prædict' ſibi ſeruiend' (ſecundum formam et effectum ſtatuti de ſeruientibus edit') a ſeruitio præd' I. T. ſine cauſa rationabili, et licentia ipſius I. T. receſſit (vt dicitur) Ideo ex parte domini regis vobis et cuilibet veſtrum præcipio, quod præfat' E. L. ad præfat' I. T. magiſtrum ſuum de ſeruiend' deliberar' faciat', Et ſi hoc recuſarer' tunc eum gaolæ caſtri Cantebr' duci faciatis, quouſque &c. Ita quod eum habeatis coram me, et ſocijs meis, Iuſtic' dicti domini regis in comitatu prædict' ad proximam ſeſſionem pacis ibidem tenend' ad faciend' et recipiend' ea quæ ei tunc et ibidem in hac parte obijcientur. Sigillo meo ſigillat' dat' apud.*

West. 578.

Ano-

Another for the ſame.

Cantebr. SYmeon Steward *miles, vnus Iuſtic' &c. vic' com' prædict', Necnon I.B.conſtabular' villæ de B.Et R.N.balliuo itineranti in eodem comitat', & eorum cuilibet ſalutem, Ex parte dicti domini regis vobis & cuilibet veſtrum mando,quod attachiat', ſeu vnus veſtrum attach. W.R.de B.prædict' Laborer, ita quod eum habeatis, ſeu vnus veſtrum habeat, coram me & ſocijs meis Iuſtic' dicti domini regis ad pacem in comitat' prædict' conſeruand',Necnon &c.aſsign' ad prox. generalem ſeſsionem pacis in comitat' prædict' tenend', ad reſpondend' tam dicto domino regi,quam R.C.de &c.yeoman,quare in ſeruitio ipſius R.apud T.in comitat' prædict' nuper retentus,ab eodem ſeruitio ante finem termini inter eos concordat', ſine cauſa rationabili & licenc' ipſius R.receſsit,in dicti domini regis nunc contemptum, & ipſius R.graue damnum,& contra formam ſtatuti inde nuper edit' & prouiſ. Et habeatis ſeu vnus veſtrum habeat, ibi tunc hoc præceptum,Teſte &c.* Cromp.238.

A warrant for one refuſing to ſerue.

Cantebr. ROgerus Milliſent *miles, vnus Iuſtic' &c.R.L.balliuo de S. in comitat' prædict' ſalutem. Ex parte dicti domini regis tibi mando quod attachias R.A.de S. prædicta Laborer, Ita quod eum habeas coram me vel ſocijs meis Iuſtic' dicti domini regis ad pacem in comitat' prædict' conſeruand', (Necnon ad diuerſa felonia,tranſgr' & alia malefacta in eodem comitat' audiend' & terminand' aſsign') ad proximam generalem ſeſsionem pacis in comitat' prædicto tenend', ad reſpondend' tam dicto domino regi,quam B.C.de A.&c.yeoman,quare ipſe prædict' R.A.licet in ſeruitio congruo pro ſtatu ſuo,per præfat' B.C.fuit ſæpius requiſitus ei ſeruire, ipſum tamen B. C. ſeruire penitus recuſauit, in contempt' dicti domini regis, & ipſius B.C. graue damnum,& contra formam ſtatuti de ſeruientibus nuper edit' & prouiſi.Et habeas ibi tunc hoc mandat', Teſte &c.* Cromp.238.

And yet ſee the ſtatute 5.*Eliz.cap.*4. whereby the departure of a ſeruant, and refuſing to ſerue &c.are referred to two Iuſtices of P. by them to bee firſt examined, and then the offendors to bee committed if they be faultie therein. See *antea tit.Labourers.*

A warrant for the ſuppreſsing of an alehouſe.

Cantebr. IOhn Cage knight, and *Edward Hinde* knight, two of the kings maieſties Iuſtices of the peace within the ſaid countie of Cambridge

bridge. To the conſtables of B. and to either of them greeting: Wheras we are credibly informed that R.D. of your town victualler, is himſelfe a man of euill behauiour, and beſides doth ſuffer euil rule & diſorder to be kept in his houſe, contrarie to the lawes and ſtatutes of this realme. Theſe are therefore in his maieſties name to wil and command you forthwith to repaire to the houſe of the ſaid R.D. and to charge him to ſurceaſe from keeping any longer any alehouſe or tipling houſe, and to ſurceaſe from common ſelling of ale or beere at his peril, and withall that you cauſe his ſigne to be pulled downe: hereof faile you not, as you and either of you will aunſwere the contrarie at your perill. Giuen vnder our hands and ſeales at B. the day of and in the yeare of the raigne of our moſt gratious ſoueraigne Lord Iames &c.

A warrant to leuie money forfeited by alehouſe haunters.

The the Conſtables, and Churchwardens &c.

FOraſmuch as it hath beene duely proued before mee, according to the ſtatute in that behalfe prouided, that all and euery the perſons here vnder named, being inhabitants within your pariſh of W. vpon the twelfth day of this inſtant moneth of Nouember haue beene, and continued drinking and tipling in the houſe of G.W. of your ſaid towne (Inne-keeper or Alehouſe-keeper) contrary to the forme of the ſame ſtatute. See *antea tit. Alehouſes.* *Cantabr.*

Theſe are therefore in his maieſties name to charge and command you and euery of you, forthwith to leuie by diſtreſſe and ſale of the goods of euerie the ſaid perſons hereunder named, the ſumme of 3.s.4.d. a peece, if they ſhall refuſe or neglect, forthwith to pay the ſame, which ſeuerall forfeitures ſhal be beſtowed and imployed by you to the vſe of the poore of your ſaid pariſh: And that you render to euery of the ſaid offendors the ouerplus that ſhall remaine vpon your ſale of their ſaid goods: and if the ſaid offendors, or any of them ſhall refuſe or neglect to pay their ſaid ſeuerall forfeitures, and that you can find no ſufficient diſtres whereon to leuie the ſame, that then you the Conſtables, or one of you, ſhall commit euery ſuch offendor or offendors (refuſing or neglecting to pay the ſaid ſumme or forfeiture, and not hauing ſufficient whereon to bee diſtrained for the ſame) to the ſtockes, there

there to remaine by the ſpace of foure houres: and this ſhall bee your ſufficient warrant herein. Dated &c.

Againſt Alehouſe-keepers.

THe like warrant may be made to leuy the forfeitures of Inne-keepers, or Alehouſe-keepers, for ſuffring townſmen to continue drinking in their houſes, or for ſelling leſſe then one quart of their beſt beere or ale for 1.d. ſauing that the diſtres taken of ſuch Inne-keepers and Alehouſe keepers, is not to be ſold, till after ſixe daies, and then for default of ſatisfaction, the ſame are preſently to be appriſed and ſold, and therefore ſuch warrant muſt therin be made accordingly. See *1.Iac.ca.9.P.7.8.*

A warrant for the remouing of a petty Conſtable, and for the ſwearing of another.

Cantebr. *Iacobus dei gratia &c. vicecom' Cantebr', Necnon capitali Conſtabulario hundredi de R. & eorum cuilibet ſalutem, Quia W.P. & R.S. ſubconſtabular' villæ de C. & K. (certis de cauſis nos mouentibus) ab officio ſuo amoueri & exonerari fecimus: Ideo vobis & cuilibet veſtrum coniunctim & diuiſim præcipimus & mandamus, quod I.F. & R.M. ad omnia & ſingula eidem officio incumbentia bene & fideliter exercenda & exequenda (prout ipſi nobis inde reſpondere voluerint) iurare faciatis: dictiſq; W.P. & R.S. ſimiliter iniungentes, quod ipſi de dicto offic' vlterius exercendo & exequendo nullatenus ſe intromittant, quouſq; aliud de nobis habuerint mandatum: Et quicquid inde feceritis, Iuſticiarijs noſtris ad pacem noſtram in dicto com' conſeruand' aſſignatis ad prox. general' ſeſſionem pacis apud C. in dicto comitat' tenend', certificetis, Hoc præceptum noſtrum tunc & ibidem remittentes. Teſte* Richardo S. George *milite, vno Iuſticiar' noſtrorum prædictor', tali die &c.*

You ſhall find this former preſident in M^r. *Lambert*, But vpon ſuch warrant, *quære* who ſhal giue the oath to the new conſtables, whether the high ſheriſe, or high conſtable, or the Iuſt. of P. that granted out ſuch warrant. Lambt.yy.3.b

This authoritie of remouing petty conſtables, and of chuſing and ſwearing new, is reputed properly to belong to the leet, and if new elect be not preſent at the leet to take his oath accordingly, then vpon certificate or notice thereof to any Iuſtice of peace of that countie, the Iuſtice doth vſe to ſend his warrant for

for the party ſo choſen, and to giue them their oath.

Alſo in default of the leete, or otherwiſe, where there ſhall be iuſt cauſe, Euery Iu. of P. (*ex officio* as it ſeemeth) may remoue the old Conſtables, and may chuſe, and ſweare new, which alſo wee ſee to be warranted by common experience.

And I haue ſeene ſome preſidents to ſuch purpoſe as followeth.

To our louing freind A. B. of W. yeoman.

Cantebr. THeſe are in his maieſties name to charge and commaund you, to make your repaire vnto vs, or to ſome other Iu. of P. of this county, to take the oath of a conſtable, to ſerue his maieſtie within the towne of W. according to the choiſe made of you by the Iurie at the laſt leete holden in your towne, And hereof fayle you not, dated &c.

The

The forme of a Superſedeas by a Iuſtice of Peace.

Iohn Richardſon Doctor of Diuinity, and vice-Chauncelour of the Vniuerſitie of Cambridge, one of the Iuſtices of peace of our Soueraigne Lord the Kings maieſtie within the countie of Cambridge, to the ſherife, bailifes, conſtables, and other the faithfull miniſters, and ſubiects of our ſaid ſoueraign Lord within the ſaid countie, and to euery of them, ſendeth greeting: Foraſmuch as *A.B.* of &c. yeoman hath perſonally come before me at &c. And hath found ſufficient ſuretie (that is to ſay *C.D.* and *E.F.* &c. yeoman, either of the which hath vndertaken for the ſaid *A. B.* vnder the paine of twentie ponndes, and hee the ſaid *A.B.* hath vndertaken for himſelfe vnder the paine of fortie pounds) that he the ſaid *A.B.* ſhall well and truely keepe the peace, towards our ſaid ſoueraigne Lord, and all his liege people, and eſpecially towards *G.H.* of &c. yeoman, and alſo that hee ſhall perſonally appeare before the Iuſtices of the peace of our ſaid ſoueraigne Lord at the next generall ſeſſions of the peace to be holden at the Caſtle of Cambridge: * Therfore on the behalfe of our ſaid ſoueraigne Lord, I command you, and euerie of you, that you vtterly forbeare and ſurceaſe to arreſt, take, impriſon, or otherwiſe by any meanes (for the ſaid occaſion) to moleſt the ſaid *A.B.* And if you haue (for the ſaid occaſion, and for none other) taken or impriſoned him, that then you doe cauſe him to bee deliuered, and ſet at libertie without further delay. Yeouen at Cambridge aforeſaid, vnder my ſeale this laſt day of Iuly &c.

* The Superdeas is good, though it name neither the ſureties, nor the ſums.

* Or for the ſaid countie.

The

The forme of a Supersedeas (by a Iustice of peace) vpon a writ of *Supplicavit* against an Infant.

VAlentinus Cary *sacræ theologiæ doctor, & decanus Sancti Paul' Cantebr. London, vnus Iusticiar' domini regis nunc ad pacem in com' præd' conservand', assignat', vicecom' eiusdem com', ac omnibus & singul' ballivis, constabular', ceterisq; dc'i dom' regis ministris tam infra libertates, quam extra in com' præd' salutem: Sciatis qd' breue dict' domin' regis recepi in hæc verba, Iacobus &c.* reciting here all the writ *verbatim. Quia I.B. de &c. I.S. de &c. Et præf. C.A. coram me præf.* Valentino Cary, *personaliter compariuer', & prædict' I.B. & I.S. manuceper' pro dicto C.A. (qui infra ætatem 21. annor' existit) viz. quilibet manucaptor' præd' in 20.li. quas recognouer' se debere dict' domino regi, ac concess. de terris & tenementis, bonis & catallis suis, ad opus dicti dom' regis leuand', viz. qd' prædict' C.A. dampnũ vel malum aliquod alicui de populo dict' domini regis de corpore suo, vel de incendio domorum suarum non faciet nec fieri procurabit quouismodo. Ideo ex parte dicti domini regis vobis & cuilibet vestrum mando, qd' de coarctand', aut attachiand' dictum C.A. ad inveniendam aliquam securitatem pacis per ipsũ gerend' erga dictũ dom' regem & cunctũ populũ suũ, seu alicui de eodem populo suo coram vobis, seu aliquo vestrum inveniend' supersed', seu supersed' fac' omnino, Et si ipsũ C.A. occasione præd' & non aliu ceperitis, seu capi mandaveritis, & in prisona ipsius dom' regis, sub custodia vestra detineritis, tunc ipsum a prisona in qua detinetur sine dilatione deliber' fac', seu vnus vestrum deliberari faciat, Teste me præfato* Valentino Cary, *vicesimo die Novemb. anno regni dicti dom' regis nostri Iacobi dei gratia &c.*

A Supersedeas for the good behauiour.

Comp. 237. NOte that vpon good sureties taken for the good behauiour, a *Supersedeas* may bee graunted, as for the peace, *mutatis mutandis.*

Note also that a *Supersedeas, de Capias indictatum de transgressione*: and so of an *Exigent*, may be granted by the Iust. of peace, out of sessions, For otherwise it were mischieuous for the partie, aswell by reason of his imprisonment, as also for that otherwise he may be outlawed before the sessions, if the Iustices of P.

might not take sureties of him for his apparance; and all is but to appeare to answere to the indictment.

And master *Crompton* is of opinion that these may be granted by any one Iu. of peace, with whom agreeth the booke of Entries: But master *Lambert* thinketh it not in the lawfull power of any one Iustice of peace, to grant such *Supersedeas*, at this day, but that it must bee done by two Iustices at the least, and the one being of the *Quorum*: Neuertheless for that I find the old presidents to runne in the name one Iustice of peace alone, I haue drawne these accordingly; persuading notwithstanding the ioyning of two Iustices herein, and the one of the *Quorum*, if they may conueniently.

Cromp.234. hic.275. Lib.Intr 601. Lamb.508. & yy.3.

A Supersedeas de Capias indictatum de transgressione.

Cantebr. IOhannes Richardson *sacræ theologiæ Doctor, vnus Iusticiar' domini regis nunc ad pacem in comitat' præd' conseruand', Necnon ad diuersas felonias transgr' &c. in eodem comitat' audiend' & terminand' assignat', vic' com' præd' salutem. Quia C. D. de A. in comitat' tuo* yeoman *venit coram me, & inuen' sufficient' manucaptores essendi coram Iustic' dicti domini regis ad pacem in comitat' præd' conseruand', Necnon ad diuersas felonias &c. in dicto comit' audiend' & terminand' assign', ad generalem sessionem pacis apud in com' præd' proxim. die tenend', ad respondend' dicto domino regi de quibusdam transgres. contemptibus & offencis, vnde indict' existit, Ideo ex parte dicti dom' regis tibi præcipio qd' de capiend' præfat' C. D. seu ipsum imprisonand' aut eum ea ex causa aliqualiter molestand' omnino supersed', & si eum ea ex causa & non alia ceperitis, tunc ipsum sine dilatione deliber' faciat', Teste me prefato* Iohanne Richardson *tali die & anno.*

Cromp.238. Lib.Intr 601.

Alias.

Cantebr. HEnricus Vernon *Armiger, vnus Iusticiarior' dicti domini regis ad pacem in comitatu prædicto conseruandam, Necnon ad diuersas felonias transgres. ad alia malefacta in eodem comitatu audiendum & terminandū assign' vicecom' comitat' prædict', ac omnibus & singulis balliuis, constabularijs, ceterisque dicti domini regis ministris, tam infra libertates quam extra in comitat' prædicto salutem: Licet nuper per breue dicti domini regis vobis seu vni vestrum præceptum fuit quod caperetis seu vnum vestrum caperet A.B.*

Cromp.234.

A.B. de S in comit' præd' yeoman, *si inuentus fuerit in eodem, & ad ipsum salvo custod', Ita qd' haberetis seu vnus vestrū haberet corpus eius coram custodibus pacis, ac Iustic' dicti domini regis ad pacem in comitat' præd' (Necnon ad diuersa felonias transgres: & alia malefacta in eodem audiend' & terminand' assign') apud tali die ad respondend' dicto domino regi de contemptibus & transgression' vnde coram dictis Iustic' indictatus existit: quia modo prædictus A. B. venit coram me & inven' sufficien' plegios pro fine suo cū dicto domino rege pro præmissis faciend', Ideo ex parte dicti domini regis vobis coniunctim & diuis. mando qd' ad executionem brevis prædict' vlterius fac' supersed' omnino, Et si ipsum A.B. ea occasione & non alia ceperitis, & in prisona dicti domini regis detineritis tunc ipsum sine dilatione ab eadem deliber' faciat', seu vnus vestrum deliber' faciat, & habeatis seu vnus vestrum habeat hoc præceptū ad Sessiones prædict', dat' die Augusti anno regni domini nostri Iacobi dei gratia &c.*

Supersedeas de Capias pro fine.

Cromp. 234. FRanciscus Brakyn *armiger' vnus Iusticiar' domini regis nunc ad pacem in comitat' prædict' conseruand' assign', vic' com' præd', quia C.D. de A. in dicto comitat'* yeoman, *venit coram me, & inven' sufficient' manucaptores essendi ad proximam generalem sessionem pacis in comitat' præd' tenend', ad faciend' finem cū dicto domino rege pro quibusdam transgres. contemptibus & offencis, vnde indictatus existit, Ideo tibi præcipio, qd' de capiend' præfat' C.D. imprisonand' seu ipsum ea occasione aliqualiter molestand' omnino supersed', & habeas ibi tunc hoc præceptū, Teste me &c.* Cantebr.

Supersedeas de Capias indictat' de felonia.

Cromp. 234. RObertus Castle *armig', vnus Iusticiar' domini regis nunc ad pacem in comitat' præd' conseruand' assign', vic' comitat' præd', Necnon omnibus & singulis ballivis constab. ceteris q; dicti dom' regis ministris tam infra libertates quam extra in dicto comitat' salutem: Quia A.B. de C. in comitat' prædict'* husbandman, *venit coram me, & inuen' sufficient' securit' essendi coram Iustic' dicti dom' regis ad pace in com' præd' conseruand', Necnon ad diuersa felonias, transgr' & alia malefacta in eodem com' audien' & terminād' assign', ad prox. general' sess. pacis in com' præd' tenend' ad respond' dict' dom' regi, de diuers. felon' & transg. vnde coram eis indict' existit, Ideo ex parte dicti dom' regis* Cantebr.

vobis & cuilibet vestrum mando, quod de capiend' prædict' A.B. ea ex causa supersed' omnino, & si eum ea occasione & non alia ceperitis, seu imprisonaueritis, tunc ipsum sine dilatione deliber' faciat', dat' &c.

Supersedeas de exigi fac' de felonia.

Cantebr. IAcobus *&c. vic' com' Cantebr. salutem. Quia C.D. de A. in comitat' tuo yeoman, venit coram E.F. &c. & inuenit sufficien' manucaption' essendi coram custod' pacis nostræ (ac Iustic' nostris ad diuersas felonias &c) ad generalem sessionem pacis nostræ apud G. tali die tenend', ad respondend' nobis de quibusdam felonijs vnde indictatus est, Ideo tibi præcipimus quod de vlterius exigend' præfat' C.D. ad aliquod comitat' tuum, vel imprisonand', siue ipsum ea occasione aliqualiter molestand', omnino supersed', & habeas ibi tunc hoc breue. Teste I.C. apud H. tali die & anno.* Cromp. 233.

Recog-

Recogniſances.

A ſingle Recogniſance taken before Iuſtices of Peace.

MEmorand' quod die anno regni domini noſtri Iacobi dei gratia Angliæ, Frãciæ, & Hiberniæ regis, fidei defenſoris &c, venerunt coram nobis Edwardo Aldred, & Henrico Martyn armig' Iuſtic' dicti domini regis ad pacem in comitat' C. conſeruand', aſſignat' I. S. de B. in comitat' E. yeoman, & W. S. de eadem weauer, ac R. D. de S. in comitat' taylor, & recognouer' ſe debere dicto domino regi, viz. quilibet manucapt' præd' quing. libr', & præd' I. S. decem libr' bonæ & legalis monetæ Angl' ſoluend' eidem domino regi in feſto Purificationis beatæ Mariæ virginis proxim' futur' poſt dat' præſent', Et niſi fecerint, conceſſerunt pro ſe, hæred', execut', & admin'ſt' ſuis per præſentes quod dictæ ſeperales ſummæ leuent' & reſuperent' de mãneriis, meſſuagijs, terr', tenement', bonis, catallis, & hereditament' ipſor' I. S. W. S. & R. D. hæred', executor', & aſſig' ſuor' vbicunq; fuerint inuent' per præſentes, dat' &c.

Another ſingle Recogniſance.

MEmorand' qd' die anno regni domini noſtri Iacobi dei gratia &c. D. E. de Balſham in comit' præd' Cantebr' yeoman perſonaliter venit coram me Michaele Dalton armig. vno Iuſtic' dicti domini regis ad pacem in comitat' præd' conſeruand', aſſignat' & recogn' ſe debere dicto domino regi decem libras bonæ & legalis monetæ Angliæ (de bonis & catallis, terris, & tenementis ſuis fieri & leuari, ad opus dicti domini regis, hæred' & ſucceſſorũ ſuorum) ſi defecerit in conditione indorſata.

A Recogniſance for the peace.

Cantebr. MEmorand' quod die anno regni dn'i noſtri Iacobi dei gratia &c. R.P. de E. in com' prædict' yeoman, in propria perſona ſua venit coram me Rogero Thornton armig', vno Iuſtic' dicti domini regis ad pacem in dicto comitat' conſeruand' aſſignator' & aſſumpſit pro ſeipſo ſub pœna viginti librar', & H.I. de L. in com' husbandman, tunc & ibidem in propriis perſonis ſuis ſimiliter venerunt, & manuceperunt pro prædict' R.P. viz. quilibet eorum ſeperatim ſub pœna cent' ſolid': quod idem R.P. perſonaliter comparebit coram Iuſticiarijs dicti domini regis ad pacem, ad proximam generalem ſeſſionem pacis in comitat' prædicto, ad faciend' & recipiend' quod ei per curiam tunc & ibidem iniungetur: Et quod ipſe interim pacem dicti domini regis cuſtodiet erga ipſum domin' regem & cunct' populum ſuum & præcipue verſus M.N. de predict' yeoman, & quod dampnum vel malum aliquod corporale aut grauamen præfato M.N. aut alicui de populo dicti domini regis, quod in leſionem aut perturbationem pacis ipſius domini regis, ſeu præfati M. cedere valeat quouiſmodo, non faciet, nec fieri procurabit. Quia quidem ſumm' viginti librar' prædict' R.P. & quilibet manucaptorum prædict', prædictas ſeperales ſummas cent' ſolid' recognouerunt ſe debere dicto domino regi de terris, & tenementis, bonis, & catallis ſuis quorumlibet & cuiuſlibet eor', ad opus dicti domini regis hæred' & ſucceſſor' ſuorum fieri & leuari (ad quorum cunq; manus deuenerint) ſi contingerit ipſum R.P. præmiſſa, vel eorum aliquod in aliquo infringere, & inde legitimo modo conuinci, In cuius rei teſtimon', ego prædictus Rogerus Thornton, ſigillum meum appoſui, dat' apud &c. Lib. Intr 453.

And if the Iuſtice ſhall onely ſubſcribe his name to the recog. without his ſeale, it is well enough; and ſo is the vſual courſe and forme with vs.

Or thus for the peace.

Cantebr. MEmorand' quod die &c. A.B. de &c. & C.D. de eadem yeoman, venerunt coram me Thoma Brewſter armiger', vno Iuſticiar' &c. & manuceperunt pro I.S. nuper de L. &c. quod ipſe perſonaliter comparebit coram me præfato Tho.Br. & ſocijs meis Iuſticiar' pacis domini regis ad proximam generalem ſeſſionem &c. Et quod ipſe interim geret pacem erga cunctum populum

populum Domini Regis, & præcipue erga R. B. &c. viz. quilibet manucaptorum prædictorum ſub pœna viginti librar'. Et prædictus I. S. aſſumpſit pro ſeipſo ſub pœna quadraginti librar'. Quam quidem ſummam quadraginti librar' prædictus I. S. & quilibet manucaptorum prædictorum dictam ſummam viginti librar' recognouerunt &c. vt ſupra.

And this may be well done alſo by a ſingle Recogniſance in Latine, with a condition added, or endorſed in Engliſh, for the keeping of the peace, and for the day and place of the parties appearance at the quarter Seſſions; as followeth.

A condition to keepe the peace.

THe condition of this Recogniſance is ſuch, that if the within bounden I. S. ſhall perſonally appeare before the Iuſtices of our ſaid Soueraigne Lord the King, at the next generall Seſſions of the peace to be holden in the ſaid Countie of Cambridge, To doe and receiue that which by the Court ſhall bee then and there enioyned him; And that he in the meane time do keepe the peace of our ſaid Soueraigne Lord the King, towards the Kings Maieſtie and all his liege people, and eſpecially towards A. B. of C. aforeſaid Yeoman, That then &c.

A Recogniſance for the good Behauiour.

MEmorand', quod die menſis anno Regni Iacobi, &c. R. G. de &c. & H. C. & I. S. de eadem, &c. vener' coram nobis Roberto Hagar, & Iacobo Reynolds, *Armiger. Iuſtic' dicti domini Regis, &c. Et manuceperunt pro præfato R. G. & idem R. G. adtunc aſſumpſit pro ſeipſo, quod idem R. G. perſonaliter comparabit coram Iuſtic' dicti domini Regis ad pacem, &c. ad proximã generalem Seſſionem,* * *&c. Et quod ipſe interim ſe bene geret erga dominum Regem & cunctum populum ſuum, & præcipue erga I. B. de C. &c. ſc. quod ipſe non inferet, nec inferri procurabit, per ſe nec per alios, damnum aliquod ſeu grauamen præfato I. B. ſeu alicui de populo ipſius Domini Regis de corporibus ſuis, per inſidias, inſultus, ſeu aliquo alio modo, quod in leſionem ſeu perturbationem pacis dicti Domini Regis cedere valeat quouiſmodo, viz. vterq; prædict' H. C. & I. S. ſub pœna cent' libr'. Quas quidem ſeparales ſummas cent' librar', vterque*

See the Recog. for the peace.

Lib. Intr. 453.

vterque prædictor' H.C. & I.S. (vt prædicitur) per ſe, ac prædictus R.G. ducent' librar' recognouerunt ſe debere dicto Domino Regi de terris & tenementis bonis & catallis ſuis & quorumlibet, ac cuiuslibet eorum, Ad opus ipſius dicti Domini regis fieri & leuari, ſi contingat præfatum R.G. in aliquo præmiſſorum deficere, & inde legitimo modo conuinci. Dat' &c.

Or by a ſingle Recogniſance, with this Condition ſubſcribed, or indorced.

CONditio Recognitionis prædictæ talis eſt, Quod ſi prædictus R. G. impoſterum ſe bene geret, & pacem domini regis conſeruabit erga dictum dominum Regem, & cunctum populum ſuum, & nullum damnum corporale, nec aliquid quod in leſionem pacis domini regis cedere valeat, faceret quoquo modo, extunc recognitio prædicta pro nullo teneatur, alioquin in ſuo robore permaneat. Lamb. 125. Lib. Intr. 454.

Note, that all Bonds, Obligations, and Recognizances that ſhall bee taken by any Iuſtice of peace (or other) for any cauſe touching the King, muſt be made and taken in the Kings name, and by theſe words, *Domino Regi, &c.* See heereof *antea Suretie for the Peace, and Recognizances.* 33 H 8. cap 39

Alſo, note that the Recognizance runneth, *De terris & tenementis, bonis & catallis, &c. fieri & leuari &c.* And yet the King may be at his election, to take execution of the body of the Recognizors, as well of the Principall, as of the Sureties or of their landes, and chattels (for the ſumme in the Recognizance conteined) *per Curiam.* 7. *Hen.* 4. 34. *a. Vide antea titulo, Suretie for the Peace.*

And (it ſeemeth) by the Common Lawe before the Statute of 33. *Henr.* 8. 39. That in all caſes where a man is a debtor to the King, as well his body, as his landes and goods, are liable to the Kings Execution; For *Theſaurus Regis, eſt pacis vinculum, & bellorum nerui,* And therefore the Lawe doeth giue to the King full remedie for it. See *Coke* 3. 12. *b.* & *Coke* 11. 93. *a.*

A Re-

A Recognizance to giue in Euidence against a priſoner.

MEmorandum, quod die Anno Cantebr.
regni Domini noſtri Iacobi, *Dei gratia Angliæ, Franciæ, & Hiberniæ Regis fidei defenſor' &c. R. T. nuper de C. in Comitat' prædict' Yeoman, venit coram me Ro. Th. Armiger' vno Iuſtic' dict' domini regis ad pacem in Comitat' prædict' conſeruand' aſſignat', & cognouit ſe debere dicto domino regi quinque libr' legalis monet' Angliæ, ſub conditione quod ſi ipſe perſonaliter comparebit coram Iuſtic' dicti domini Regis ad proximam generalem gaolam deliber' in Comitat' prædict' tenend'. Et adtunc & ibidem oſtendendum in euidenc' ſecundum formam Statuti. verſ. D. F. in Comitatu prædict' qui modo attach. & ſuſpect' feloniæ dict' domini regis Comitat' prædict' commiſſus exiſtit, quod tunc &c. Alioquin &c.*

Or this may be done by a ſingle Recogniſance, with a condition endorced, as followeth.

A Condition to preferre a Bill of Inditement, and to giue in euidence againſt a priſoner.

THe condition of this Recog. is ſuch, That whereas one A. B. of G. Laborer, was this preſent day brought before the ſaid Iuſtice, by the within bound D. E. and was by him charged with the felonious taking of twenty ſheep of him the ſaid D. and thervpon was ſent by the ſaid Iuſtice to the Kings Maieſties gaole: If therefore he the ſaid D. E. ſhall and do at the next generall Gaole deliuery (to bee holden in the ſaid Countie) preferre or cauſe to be framed and preferred, one Bill of Inditement of the ſaid felony againſt the ſaid A. B. and ſhall then alſo giue euidence there concerning the ſame, as well to the Iurors that ſhall then enquire of the ſaid Felony, as alſo to them that ſhall paſſe vpon the triall of the ſaid A. B. That then &c. or elſe to ſtand in full force for the King.

Or thus, to giue in Euidence.

THe condition, &c. That if the aboue bounden D. E. do at the next generall Seſſions &c. purſue and giue ſuch euidence as he knoweth againſt A. B. now priſoner in the caſtle of C. concerning certaine felonious acts by him committed; Then &c.

A Con-

A Condition to appeare before the Iuſtices of Peace at their next Seſſions.

Conditio iſtius obligationis talis eſt, quod ſi A.W. de &c. Spinſter, in propria perſona ſua compareat coram Iuſtic' Domini regis de pace in Comitatu C. conſeruauda aſsignat' (necnon ad &c.) ad proximam Seſsionem dicti Domini Regis in Comitatu prædict' tenend', ad reſpondend' tam dicto domino regi, quam G. S. de placito tranſgreſsionis & contemptus contra formam Statuti ſeruient'. Quod tunc præſens Obligatio vacua, & pro nulla habeat', & ſi prædict' A. contra præmiſſa ſeu eorum aliquod in futur' fecerit, ſeu fieri procurauerit, quod tunc præſens Obligatio in omni ſuo robore ſtet & effectu, &c.

A Condition for Alehouſe-keepers.

THe Condition of this Recogniſance is ſuch, Whereas the within bounden A. B. is admitted and allowed by the within named Sir *Edward Peyton*, and *Henry Vernon*, (two of the Kings Maieſties Iuſtices of the peace within the County of Cambridge within written) to keepe a common Ale-houſe, or Tipling houſe, and to vſe common ſelling of Ale or Beere, onely within the now houſe of him the ſaid A. B. (and not elſewhere) ſcituate in the high ſtreete of the Towne of M. within written, and called the ſigne of the Hart. If therefore hee the ſaid A. B. during ſuch time as he ſhall keepe ſuch common Alhouſe there, ſhall not ſuffer any vnlawfull play at the Tables, Dice, Cards, Tenniſe, Bowles, Cloſh, Coytes, Loggets, or other vnlawfull Games to bee vſed in his ſaide Houſe, or in his Garden, Orchard, or other his ground, or place, (eſpecially by mens Seruants, Apprentices, common Labourers, or idle perſons) Nor dreſſe, or cauſe, or ſuffer to be dreſſed, any fleſh to bee eaten vpon any day forbidden by the Lawes or Statutes of this realme of England: Nor wittingly and willingly admit, or receiue into his ſaid houſe, or any part thereof, any perſon notoriouſly defamed, of, or for Theft, Incontinencie, or Drunkenneſſe, or that ſhall bee before hand notified to him the ſaid A. B. by the Conſtable of M. aforeſaid, for the time being, or by his Deputie, to bee an vnmeete perſon to be receiued into a common

mon Alehouſe: Nor ſhall keepe or lodge there any ſtrange perſon (aboue the ſpace of one day, and one night together) without notice thereof firſt giuen to the Conſtable, or his Deputie there: And finally, if hee the ſaid A. B. during all the time that hee ſhall keepe common ſelling of Ale or Beere in the ſaid houſe, ſhall and doe there vſe and maintaine good order and rule: Then this preſent Recognizance to bee voyd, &c. or elſe, &c.

But the manner of this Condition for Alehouſekeepers, is (by the Statute) partly referred to the diſcretion of ſuch Iuſtices of peace, as take ſuch Recognizance, or bond, as you may ſee in *pag.* 25.

And in ſome Shires, the Iuſtices of peace doe condiſcend vpon certaine Articles framed by their diſcretions, and generally to bee propounded to all common Aleſellers; taking the Bond for the performance of the ſame articles; A copie whereof they doe vſually deliuer to euery of them, which maner is auowable alſo.

Amongſt articles of this kinde, I ſhould commend to the Iuſtices care theſe three eſpecially:

Firſt, that no Alehouſekeeper vpon the Sabboth day ſhould receiue or ſuffer to remaine any perſon whatſoeuer (as their gueſtes) in any their houſes, or other places, to tipple, eate or drinke; other then trauailers, and ſuch as come vpon neceſſary buſineſſe.

Secondly, that they ſuffer no perſon whatſoeuer, reſorting to their houſes onely to eate or drinke, to remaine or be there after nine of the clocke in the euening, from Michaelmaſſe till Lady day, nor from Lady day till Michaelmaſſe, after tenne of the clocke at night.

Thirdy, that they ſuffer no perſon, reſorting to their houſes onely to eate and drinke, to remaine tipling there aboue one houre, other then trauailers.

A Licence to keepe an Alehouſe.

Iohn Cotton, Knight, and *Michael Dalton*, Eſquire, two Iuſtices of our Soueraigne Lord the Kings Maieſtie, in his highneſſe Countie of C. ſend greeting in our Lord God euerlaſting: Know ye, that wee the ſaid Iuſtices, of good and credible report *Cambr.*

to

to vs made, by diuers credible and honeſt perſons, &c. That I. W. of &c. is a man meet to keepe a common Alehouſe in the houſe where hee now dwelleth, haue licenced, allowed, and admitted, and by theſe preſents doe licence, allow, and admit the ſaid I. W. to keepe a common Alehouſe or tipling houſe, at L. for one whole yeare next enſuing the date hereof, ſo that the ſaid I. W. ſuffer not any vnlawfull Games to be vſed in his ſaid houſe, nor any euill rule or order to be kept within the ſame, during the time of his ſaid Licence; for the vſing of which Licence accordingly, we doe you to wit, that we haue bound the ſaid I. W. and two other ſufficient ſureties, in an hundred ſhillings apiece by Recognizance to the Kings Maieſties vſe. In witneſſe whereof we haue hereunto ſet our hands and ſeales. Dated &c.

Or thus.

Cantebr. WEe whoſe names are heereunder written, Iuſtices of the Peace of our Soueraigne Lord the King within the countie of Cambridge, doe licence and allow I. W. of L. in the ſaid Countie, to keepe a common Alehouſe, or Tipling houſe in L. aforeſaid, for and during one whole yeare next enſuing the date heereof; So as hee doeth not ſuffer any vnlawfull Games to bee vſed in his houſe, nor any euill rule to bee kept there, but doeth behaue himſelfe therein, according to the Lawes and Statutes of this Realme in that behalfe made and prouided. In witneſſe &c.

A Licence to Brew.

WHereas A. M. of W. in the Countie of D. Husbandman, hath come before vs *Iohn Cutts*, Knight, and *Fr. Brakin*, Eſquire, two of the Kings Maieſties Iuſtices of peace within the ſaid Countie, and bound himſelfe in a Recoguiſance, with ſufficient Sureties, to brew and ſell, and keepe a common Alehouſe, according to the Statute of Brewers made in the firſt yeare of the reigne of our late Soueraigne Lord and King *Edward* the ſixt. Now know ye vs the ſaid *Iohn Cutts*, and *Fr. Brakin*, to haue licenced the ſaid A. M. to Brewe to ſell, and to keepe a common Alehouſe, according to the ſaid Statute. Giuen vnder our hands, the xiij. of Iuly, in the &c.

A Licence

A Licence, or Paſport to trauell.

SIr *Roger Milliſent* of L. in the Countie of C. Knight one of the Kings Maieſties Iuſtices of Peace within the ſaid Countie, To all Iuſtices of Peace, Mayors, Bayliffes, Conſtables, and all other his Maieſties officers and miniſters whatſoeuer, ſendeth greeting in our Lord God euerlaſting: Foraſmuch as the bearer hereof E. P. widow, being brought into great pouertie and neceſſitie, aſwell by the late death of her husband as otherwiſe, hath deſired Licence to trauell into the Citie of B. whereas one E. P. brother of her ſaid husband inhabiteth, by whoſe goodneſſe ſhee hopeth greatly to be relieued & holpen. In conſideration whereof, know ye me the ſaid Sir *Roger M.* to haue licenced the ſaid E. P. to trauell and paſſe the direct way from H. within the ſaid Countie of C. whereas ſhe lately dwelled, vnto the ſaid Citie of B. together with her two little children, ſo as her iourney be not of longer or further continuance then twentie dayes next after the date heereof, praying you and euerie of you, not to moleſt or trouble the ſaide poore woman in her trauell, but to permit & ſuffer her peaceably to paſſe (and alſo to ayde and aſſiſt her) in this her iourney, ſo that ſhe ſhew her ſelfe in no reſpect offenſiue to his Maieſties Laws. In witneſſe, &c. *Cantebr.*

But vpon ſuch Licence, the perſons thus licenced to trauell, may neither begge, nor wander idly, nor out of their direct way. Beſides, the Iuſtices muſt be ſparing to graunt ſuch Licences, except in caſes of neceſſitie.

The forme of a Teſtimoniall, for the conueying of a Rogue, that hath bin puniſhed according to the Statute of 39. *El. cap.* 4.

Iohn at *Style*, a ſturdie vagarant begger (of low perſonage, redde haired, and hauing the naile of his right thomb clouen) aged about yeares, was this ſixt day of Aprill, in the fourteenth yeare of the reigne of our Soueraigne Lord King IAMES, of England, &c. openly whipped at W. in the ſaid Countie, for a wandering Rogue, according to the Law: and is aſſigned to paſſe forthwith from Pariſh to Pariſh by the officers thereof, the next ſtraight way to Sale in the Countie of Eſſex, where (as hee confeſſeth) hee was borne (or dwelled laſt by one whole yeare, &c. if the caſe bee ſuch) and hee is limitted to bee at Sale aforeſaid, within tenne dayes now next enſuing, at his perill. *Cantebr.*

perill. Giuen vnder the hand and seale of M. D. Esquire, one of his Maiesties Iustices of Peace of the saide Countie of Cambridge.

Note by the words of the Statute 39. *Eliz.* 4. such Testimoniall must be vnder the hand and seale of the Iustices of Peace, Constable, Headborough, and of the Minister of the Parish, or of any two of them: and yet it is taken that the Iustice of Peace alone vnder his hand and seale may take such a Testimoniall. *Lambt.* 206.

Note also, that it is needefull both in this, and in all other Testimonialls, Certificats, safe conducts and Pasports whatsoeuer, to note and specifie expressely, some assured markes of the partie, as his stature, colour of haire, complexion, or (if it may be) some apparant scarre or other note, by which he may be infallibly distinguished and known from others; lest (as is often found) both himselfe take the benefite thereof, and he also communicate the vse of the same to others, in abuse of him that made it, and of the Law in that behalfe prouided.

A Testimoniall for such as haue suffered Shipwracke.

Norff. A. B. of C. in the Countie of Norff. Esquire, one of the Kings Maiesties Iustices, &c. To all &c. Forasmuch as the bearer heereof I S. aged about, &c. hauing lately beene at Sea in a Ship called the &c. and hath suffered shipwracke, and got to land at Y. in the said Countie of Norffolke vpon the day of last past (as I am credibly informed, as well by the report of the said I. S. as also by the testimonie of diuers the inhabitants of Y. aforesaid) and for that the said I. S. hath not wherewith to relieue himselfe in his trauell homewards to D. in the Countie of H. where he saith he was borne, (or hath a dwelling &c.) These are therefore to pray you and euerie of you, to whom these presents shall come, not to molest or trouble the said I. S. in his trauell to D. aforesaid, where hee is limitted to bee within dayes next after the date hereof. But desiring you rather to relieue him in his necessitie, as to you shall seeme meete. And withall, you the Constables of euerie Towne where he shall come, to helpe him with lodging in conuenient time: So that hee trauelleth the direct way to D. aforesaid, not doing any thing contrarie to the Lawes, and Statutes of this Realme. In witnesse, &c.

The

The like (with verie little alteration) may be made, for a poore Marriner; or a poore Souldier, comming from the Seas, or from beyond the Sea. *Vide antea tit. Rogues.* *Mariner or Souldier.*

But these two last Testimonials, must be made by some Iustice dwelling neere where such persons doe land.

Warrant' custodi Gaolæ, ad recipiend' prisonarium pro felonia.

EDwardus Peyton *miles & Baronettus, vnus Iusticiar' Domini regis nunc ad pacem in com' pred' conseruand', Necnon ad diuersa felonias, transgr' et alia malefact' in eodem com' audiend' et terminād' assign': custod' Gaolæ dic' domini regis in com' predict', aut eius locum tenenti, et eorum cuilibet, salutem, Quia R. T nuper de I. in comit' pred' Laborer, iam pro suspitione cuiusdam felonie per ipsum (vt dicitur) perpetrat', per Constabular' villæ de R. in com' predicto arrestat': Ideo ex parte dic' domini regis vobis et cuilibet vestrum præcipio, quod ipsum R. in custod' vestram recipiatis, seu vnus vestrum recipiat', ibidē moratur': quousq; secund' legem et consuetudinem regni Angliæ a custod' vestra deliberetur. Dat', &c.* *Cantebr.*

A Mittimus of a felon, after his examination taken.

IOhn Cotton Knight, one of the Iustices, &c. To the Keeper of his Maiesties Gaole at the Castle of Cambridge in the saide Countie, &c. Greeting. I send you herewithall the bodie of A. B. late of C. Laborer, brought before mee this present day, and charged with the felonious taking of twentie sheepe (which also hee hath confessed vpon his examination before me,) And therefore these are (on the behalfe of our said Soueraigne Lord) to commaund you, that immediately you receiue the said A. B. and him surely keepe in your said Gaole, vntill that hee shall bee thence deliuered by the due order of his Maiesties Lawes. Hereof faile you not, as you will answer for your contempt at your owne perill. Giuen at the day of in the yeare of the reigne of our said Soueraign Lord *Iames* by the grace of God, King of England, Fraunce, and Ireland, Defendor of the Faith &c. *Cantebr.*

A Mittimus to send to the Gaole, an Alehouse-keeper, that victualleth contrarie to commaundement, &c.

Cantebr. HEnry Vernon, and *Roger Thornton* Esquires, two of the kings Maiesties Iustices of the Peace within the said Countie of Cambridge, To the Keeper of the Kings Maiesties Gaole, at C. Greeting: Whereas R. D. of B. in the said Countie of Cambridge (vpon complaint lately made vnto vs of the euill rule kept and suffered by him in his house, and other misdemeanors) by Warrant vnder both our hands and seales was discharged of his Alehouse-keeping, and was commaunded from vs, that hee should thenceforth vse no more common selling of Ale or Beere. And whereas we are credible informed that the said R. D. (notwithstanding our said Warrant and commaundement giuen him to the contrarie, as aforesaid) hath euer since obstinately, and vpon his owne authoritie, taken vpon him to * keepe a common Alehouse or tipling house, and still continueth the same. Wee doe therefore send you herewithall the bodie of him the said R. D. commaunding you in his said Maiesties name to receiue him into your said Gaole, and there safely to keepe him, * vntill such time as he shall be from thence deliuered by due order of Law. And hereof faile yee not at your perrills. Dated at the day of in the yeare of &c.

* Or, to vse commonly selling of Ale or Beere.

* Or, it shal do well, to set downe how long time the offendor is to be kept in prison.

A Mittimus (to the Gaole) of the reputed father of a Bastard childe, &c.

Cantebr. I Send you herewithall the bodie of R. C. of B. in the Countie of C. Laborer brought before me this present day, and charged by F. S. of the same Towne to haue gotten her with childe, and for that the saide R. refuseth to put in securitie for his appearance at the next Quarter Sessions, and to the end he may be forth comming when as order shall be taken for the reliefe and discharging of the said Towne of B. and for the keeping of the saide childe (when it shall happen to bee borne) according to the statute in that case prouided: These are therfore on the kings Maiesties behalfe to charge and commaund you, that immediatly you receiue the said R. C. and him safely to keepe in your said Gaole, vntill such time as he shal be from thence deliuered by due order of Law. And hereof faile yee not as you will answer your contempt at your perrill. Dated, &c.

In

In euerie Mittimus, the cause of the commitment is to bee set downe, to the end it may appeare whether the prisoner bee bayleable, or no. See heereof before in the title *Baylement.*

Also where the Iustices of Peace out of their Sessions, may heare and determine, and so may commit offendors, for the offence or fine, it is necessarie that in their Mittimus, there bee conteyned the manner of the offence, and how long time the offendor is to bee kept in prison for it. See the Mittimus for Gunnes, afterwards in *pag.* 343.

A Mittimus, to the house of Correction, of a dangerous Rogue.

Cantebr.

IOhn *Richardson* Doctor of Diuinitie,& *Michael Dalton* Esquire, two of the Kings Maiesties Iustices of the Peace within the said Countie of Cambridge, To the Master or gouernor of the house of Correction at Bottilham (for the East side of the said Countie) or to his Deputie there, Greeting; Whereas I. S. a sturdie vagrant Begger, was this day of September, *Anno Domini* brought before vs, and charged (aswell with begging and id'le wandring abroad, as also with other lewd and disorderly behauior: so as hee appeareth to vs, to be dangerous to the inferiour sort of people (or such a one as will not be reformed of his roguish life) contrarie to his Maiesties Lawes in such behalfe prouided: These are therefore to will and require you, to receiue the saide I. S. and him safely keepe in your saide house, vntill the next Quarter Sessions to bee holden in the saide Countie. And during all that time (that hee shall so continue with you) that you holde him to worke and labour, and to punish him by putting Fetters or Gyues vpon him, and by moderate whipping him, as in good discretion you shall finde cause, yeelding him for his maintenance onely so much as hee shall deserue or earne by his labour and worke. And that at the saide next Quarter Sessions you haue the saide I.S. there together with this our Warrant. And hereof see that you faile not,&c. Dated at the day of in the yeare of,&c.

Or such rogue may be sent to the Gaole. See before tit. Rogues.

See Stat. 7. Iac. cap. 4. & 39. Eliz. cap. 4.

A Mittimus to the house of Correction of a disorderly servant, or other idle person.

Cantebr. I Haue sent you herewithall the bodie of E.C. of W. in the saide Countie of C. being an idle, dissolute, and disordered fellow; Or one that will not keepe his seruice, nor follow any honest course of life: These are therefore to will and require you to receiue the said E. C. and him safely to keepe (* vntill that he shall be thence deliuered by Warrant from my selfe, or some other his Maiesties Iustices of Peace for this Countie of Cambridge) And in the meane time to hold him to such workes, and to giue him such punishment by putting fetters &c. (*vt supra*) And heereof see that you faile not, at your perill. Dated, &c. See the Statute 7. *Iacobi cap.* 4.

* Or, by the space of 10. dayes next after the date of this Warrant.

Another, for one that runneth away, leauing her charge to the Towne.

Cantebr. WEe haue sent you herewithall the bodie of I. R. of W. single woman, being lately deliuered of a childe, and one that is able to labour, and thereby to relieue her selfe and her said childe; and hath notwithstanding lately runne her way, and left her childe vpon the Parish to the charge of the same parish, contrarie to the Statute in that behalfe prouided: These are therefore to will and require you to receiue the said I. R. and her safely to keepe vntill the next Quarter * Sessions to bee holden for this Countie, And in the meane time to hold her to such workes, and to giue her such due correction by moderate whipping or otherwise, as shall be fitting in your discretion, and according to the Law in that behalfe prouided, yeelding her for her maintenance, &c. *vt supra.* And hereof see that you faile you not at your perrill. Dated &c. See the Statute 7. *Iac. cap.* 4. *& vide antea titulo Rogues, his.*

* Or else such partie must be deliuered at the meeting of the Iustices, vpon priuie search made for Rogues, and not otherwise.

Note, if any meane person shall but threaten to runne away, and leaue their family (as aforesaid) any two Iustices of Peace of that diuision, may send them to the house of correction, as aforesaid; but such their threatning, must be proued by two sufficient witnesses, vpon oath, before the said Iustices of Peace. *Vide antea tit. Rogues.* 7. Iac. cap. 4.

A

A Mittimus, to send to the Gaole such as shoote &c. in Gunnes.

¶ To the Keeper of his Maiesties Gaole at the Castle of Cambridge, and to his deputie or deputies there, and to euerie of them.

FOrasmuch as this present day A. B. and C. D. of in the said Countie Yeomen, did arrest and bring before me at aforesaid, one I. at S. in the said Countie Mariner, whom they had seene and found the same day (as they said) shooting in a Handgunne, charged with powder, and a Pellet, at a Connie in a certaine place in C. within the said Countie called the Churchfield, contrarie to the Law of this Realme, and thereupon prayed me that iustice might be done in that behalfe. I *Iohn Cutts* Knight being the next Iustice of the peace in the said Countie to the place aforesaid, did then at aforesaid, vpon the said request take the examination of the said I. at S. and did also then and there heare the proofes of them the said A. B. and C. D. touching the said offence, and for that it did then manifestly appeare vnto me, aswell by the Testimonies of them the said A. B. and C. D. as also by the plaine confession of him the said I. at S. that he had not then lands, tenements, fees, annuities, or offices to the cleere yearely value of one hundred pound, and that he had shot in the said Handgunne, in manner and forme as is aforesaid: I doe send you herewithall the bodie of him the said I. at S. as lawfully conuicted of the said offence before me; requiring you in his Maiesties name to receiue him into your saide Gaole, and him there safely to keepe (as his Maiesties prisoner,) vntill that he shall haue truly paid the paine and forfeiture of x. li. of lawfull money of England, laid vpon him for his said offence, by the Statute thereof made in the three and thirtieth yeare of the reigne of the late King *Henry* the eighth, That is to say, the one moitie thereof to our said soueraigne Lord, and the other moitie to them the said A. B. and C. D. the first bringers of him before me. And this shall be your sufficient Warrant in this behalfe. Hereof faile you not, as you will answere for your contempt at your owne perill. Yeouen at aforesaid, the twentieth day of March, in the yeare of the reigne of our said soueraigne Lo. *Iames* by the grace of God, King of Engl. France, and Ireland, Defendor of the Faith, &c.

Cantebr.

Lambt. 492.

By me the said *Iohn Cutts*.

The

The Iustices Record thereof.

Cantebr. MEmorandum quod 20. die Martij Anno Regni Domini nostri Iacobi Dei gratia Angliæ, Franciæ, & Hiberniæ Regis fidei Defensor' &c. A.B. & C.D. de in com' prædicto Yeomen, Quend' I.at S. de in dicto com' Marriner inuenerunt & viderunt apud in com' prædict' : die & anno supradict' cum quodam tormento (Anglice vocat' a Handgunne) onerato pulvere tormentario & globo plumbeo (Anglice charged with Gunpowder and a leaden Bullet) in quendam cuniculum adtunc existent' in quodam loco ibidem vocato Churchfeild sagittantem & exonerãtem dictum Torment' contra formam Statuti (in Parliament' Domini Henr' nuper Regis Angliæ octaui, apud Westminster' : anno Regni sui tricesimo tertio tent') prouisi ac editi : Ac proinde die & ann' supradict' præfat' I.at S. arrestauerunt, & apud prædict' coram me Iohannem Cutts milite, vno, & dicto loco proximo Iusticiar' dicti Domini Regis ad pacem in dicto com' conseruandam : (Necnon ad diuersas transgr' & alia malefacta in eodem com' perpetrata audiendum & terminand') assignator' adtunc vna secum adduxerunt, petentes inde Iusticiam fieri. Qua quidem petitione audita, ego præfatus Iohannes Cutts apud præd' die & anno supradictis, debite superinde examinaui præfat' I.at S. ac probationes præd' A.B. & C.D. in hac parte cepi : Ac propterea quod tam per probationes præd', quam per confessionem ipsius I.at S. adtunc & ibidem apparuit mihi manifeste quod præfat' I.at S. (cum non haberet in iure suo proprio, nec in iure vxoris suæ ad vsum suum proprium, nec aliqui alij ad vsum eiusdem I.at S. haberent, terras tenementa, feoda, annuitates, aut officia, ad clarum annuum valorem centum librarum) in tormento prædicto modo & forma prædictis sagitasset, contra formam Statuti prædicti, Ego præfat' Iohannes Cutts prænominatum I.at S. die & anno supradict' proximæ Gaolæ dicti Domini Regis apud Cantebr. in com' prædicto (de transgr' præd' coram me conuictum) commisi, ibidem moraturum quousq; pœnam & forisfacturam decem librar' Legalis monet' Angliæ vere soluerit, viz. vnam medietatem inde dic' Domino Regi, & alterã medietatem inde dic' A.B. & C.D. primis eiusdem I.at S. corã me ductoribus. In quor' omnium fidem & Testimonium, ego præfatus Iohannes Cutts, hijs præsentibus, sigillum meum apposui, Dat' apud præd' die & anno primum supradictis.

Per me præfatum Iohannem Cutts.

Baylement.

Baylement.

Lambt.341. *MEmorand' quod ſecundo die menſis Septembris Anno Regni Domini noſtri Iacobi &c. venerunt coram nobis* Iohanne Cage *milite, &* Roberto Caſtle *Armig' duobus Iuſticiar' dic' Domini regis ad pacem, in com' præd' conſeruand' aſſignat' apud H. in com' præd' A. B. et C. D. de E. in dic' com' Yeomen & ceperunt in balliu, vſq; ad proximam Gaolæ deliberationem in dic' com' tenend' quendam* F. G. *&c.* Laborer *captum & detentū in priſona pro ſuſpitione cuiuſdam felonie &c. Et aſſumpſerunt ſuper ſe, ſcilicet quilibet pred' A. B. & C. D. ſub pœna viginti librar' bonæ & Legalis monet' Angliæ, & pred' F. G. aſſumpſit pro ſeipſo ſub pœna 40. libr' ſimilis monetæ de bonis & catallis terris & tenementis eor' quorumlibet, & cuiuſlibet eorum ad opus dicti domini regis hæredum & ſucceſſorum ſuor' leuandar' ſi prefatus F. G. ad eandem proximam Gaolæ deliberatione perſonaliter non comparebit coram Iuſticiarijs dicti Domini regis, ad dictam Gaolam deliberand' aſſignatis, ad ſtandum recto de felonia pred', & ad reſpond' dic' domino regi tunc & ibidem, de & ſuper omnibus quæ illi obycientur. Dat' ſub ſigill' noſtris, die & anno primum ſupradictis. Vide antea tit.* Baylement. Cantebr.

Alias.

Cromp.235. 21.H.7.20. Br.Mainp.44. *MEmorandum quod die &c. venerunt coram nobis &c. A. B. de &c. & C. D. de &c. et E. F. de &c. & manuceperunt pro R. B. de L. in com' pred' gener' viz. quilibet eorum corpus pro corpore, quod ibidem R. B. perſonaliter comparebit coram preſat' Iuſtic' & ſocijs ſuis, ad proximam generalem Seſſionem pacis in com' pred' tenend' ad ſtand' recte in Cur': ſi quis verſus eos loqui voluerit, de diuerſis felonijs & tranſgr', vnde idem R. B. indictatus exiſtit, (vt dicitur) & ad Reſpondend' dicto Domino Regi de eiſdem, prout debet, &c. Vide antea tit.* Baylement; it muſt be vpon a certaine ſumme of money. Cantebr.

Cromp.153. Yet note, vpon this laſt maner of Baylement, the mainpernors ſhall be onely fined, if the priſoner maketh default.

The Liberate, to deliuer the Flon.

Lambt.342. *EDward Hynde* Knight, & *Edward Aldred* Eſq. two of the Iuſtices, &c. To the Keeper of his Maieſties Gaole in &c. Greeting. Foraſmuch as F. G. &c. Laborer, hath before vs found ſufficient mainpriſe to appeare before the Iuſtices of the Gaole deliuerie, at the next generall Gaole deliuerie, to be holden in the ſaid Cantebr.

ſaid Countie, there to anſwer to ſuch things as ſhal be then, on the behalfe of our ſaid Soueraigne Lord obiected againſt him, and namely to the felonious taking of two ſheepe (for the ſuſpition wherof he was taken, & committed to your ſaid Gaole) We commaund you on the behalfe of our ſaid Soueraigne Lord, that (if the ſaid F.G. doe remaine in your ſaid Gaole for the ſaid cauſe, and for none other) then you forbeare to grieue or detaine him any longer, but that you deliuer him thence, and ſuffer him to goe at large, and that vpon the paine that will fall thereon. Giuen vnder our ſeales this &c.

Warrant' ad deliberand' ſeruientem extra Gaolam.

Cantebr. FRanciſcus Brakin *Armiger, vnus Iuſtic' &c. cuſtodi Gaolæ dicti Domini regis in com' pred' ſalutem. Quia W.C. de N.* Laborer, *venit coram me, et inuenit ſufficient' ſecuritatem eſſendi coram Iuſtic' dic' domini regis ad pacem in com' pred' conſeruand' &c. ad proximam generalem Seſſionem pacis in com pred' tenendam, ad reſpondend' tam dicto domino regi, quam C.D. de &c. de tranſgr' et contemptu ſuis, contra formam Statuti de ſeruientibus nuper edit' et prouiſ. Ideo tibi ex parte dicti domini regis mando quod pred' W.C. a priſona tua, ſi ea occaſione, et non alia ibidem detineatur, ſine dilatione deliberat' fac'. Dat', &c.* Cromp. 238.

Releaſes

Releaſes of the Peace.

The Releaſe of the Iuſtice of Peace.

EGo prefatus H.Martin, *qui ſupra nominatum A.B. ad pred' ſecuritatem pacis inueniend': ex mea diſcretione compuli, eandem ſecuritatem pacis (quantum in me eſt) ex mea diſcretione, primo die Auguſti, &c. remiſi & relaxaui. In cuius rei Teſtimonium, huic preſent' relaxationi meæ ſigillum meum appoſui dat' die et anno ſupradictis.*

The Releaſe of the partie (before the ſame Iuſtice that tooke it.)

MEmorandum quod primo die Auguſti &c prefatus C.D. venit coram me Ro. Thornton, *& gratis remiſit & relaxauit (quantum in ſe eſt) pred' ſecuritatem pacis, per ipſum coram me, verſus ſupra nominatum A.B. petitam. In cuius rei Teſtimonium, Ego præfatus* Ro. Th. *Sigillum meum appoſui dat' &c.*

These two former Releaſes, are to be written vnder the Recogniſance it ſelfe: and if the Iuſtice ſhall onely ſubſcribe his name to the Releaſe, without his ſeale, it is well enough, (eſpecially where the Recogn. is without ſeale.)

Or the Releaſe of the partie may be by it ſelfe in this forme, *ſcilicet*;

MEmorandum quod C.D. de S. in com' pred' Yeoman, *primo die Auguſti anno regni domini noſtri &c. venit coram me* Ro. Hagar, *Armig' vno Iuſtic' dicti domini regis ad pacem in com' prædicto conſeruand' aſſign' apud W. in com' præd' & ibidem remiſit, & gratis relaxauit R.W. de S. in com' præd'* Laborer, *ſecuritatem pacis per ipſum C.D. verſus dictum R.W. coram me petitam. Dat' die & anno ſupradictis.* *Cantebr:*

And if the Releaſe be made befor another Iuſtice which tooke not, or hath not, the Recogn. it may be thus;

MEmorandum quod A.B. de C. in com' præd' Yeoman, *primo die Auguſti &c. venit coram me* Iacobo Reynolds, *Armig' vno Iuſtic'* *Cantebr.*

Iuſtic' dicti domini regis ad pacem in com' præd' conſernand' aſſig' (apud W. in com' præd') & ſecuritatem pacis quam habet verſus I. S. de &c. penitus remiſit & relaxauit, Dat' die & anno ſupradictis.

Releaſe of the good Abearing.

Mr. *Lambert* ſeemeth to doubt, whether the ſuertie of the good Abearing, may be releaſed by the partie (becauſe it ſeemeth more popular then the ſuertie of the peace): But others doe hold that it may be releaſed; and then may the formes of ſuch releaſe be eaſily made, by thoſe which are before concerning the peace, vſing the wordes *Securitatem de ſe bene gerendo*, in ſtead of the words, *Securitatem pacis*. Lamb. 126. PR. 22.

Suertie

Forcible Entrie.

The forme of the Record (of a Forcible Entrie) by the Iustice, vpon his view.

Memorandum, quod die *Mensis* Cantebr. *Ianuar' Anno regni Domini nostri* Iacobi, &c. *Questus est mihi* Iohanni Cotton, *Militi, vno Iusticiar' dicti Domini Regis ad pacem in dicto Comitat' conseruand' assignator'. Quidam A.B. de W. in dicto Comitatu,* Yeoman, *quod C. D. de W. prædicta, & nonnulli alij pacis dicti Domini Regis perturbatores ignoti, in domum mansionalem ipsius A. B. in W. prædicta, manuforti ingressi sunt & ipsum A. B. disseisiuerunt ac eandem manuforti & armata potentia adhuc tenent: ac proinde petijt a me sibi in hac parte remedium apponi: Qua quidem querimonia & petitione audita, Ego præfatus* Iohannes Cotton, *immediate ad dictam domum mansionalem personaliter accessi, ac in eadem domo adtunc inueni præfatum C. D. & quosdam E. F. & G. H. &c. domum illam vi & armis, manuforti, & armata potentia, (videlicet arcubus & sagittis, gladijs, pugionibus galeis, & Loricis) tenentes contra formam Statuti in Parliamento Domini* Richardi, *nuper Regis Angliæ, secundi, Anno regni sui decimo quinto tento, prouisi, ac contra formam diuersorum aliorum Statutorum. Ac propterea ego præfatus* Iohan. Cotton, *prædictos C. D. E. F. & G. H. adtunc & ibidem arrestaui, proximoq; Gaolæ dicti Domini Regis apud Castrum Cantebr. in dicto Comitatu duci feci, vt de dicta manuforti tentione, per visum & recordum meum conuictos, ibidem moretur' quousque fines dicti Domini regis pro transgress. suis prædictis fecerint. Dat' apud W prædict' sub sigillo meo, die & anno supradictis.*

The forme of the *Mittimus*, (to the Gaole) of *such as hold land by force.*

Cantebr. I *Iohn Cotton*, Knight, one of the Iuſtices of the Peace of our Soueraigne Lord the Kings Maieſtie, within his ſaid Countie of Cambridge, to the Keeper of his Maieſties Gaole at &c. in the ſaid Countie, and to his Deputie and Deputies there, and to euery of them greeting. Whereas vpon complaint made vnto mee this preſent day by A. B. of Weſton in the ſaid Countie, Yeoman, I went immediatly to the dwelling houſe of the ſaid A. B. of Weſton aforeſaid, and there found C. D. E. F. and G. H. of aforeſaid, Labourers, forcibly, and with ſtrong hand, and armed power, holding the ſaid houſe againſt the peace of our Soueraigne Lord, and againſt the forme of the Statute of Parliament thereof made in the fifteenth yeare of the late King *Richard* the ſecond. Therefore I ſend you (by the bringers hereof) the bodies of the ſaid C. D. E. F. and G. H. conuicted of the ſaid forcible holding, by mine owne view, Teſtimonie, and Record: Commaunding you in his Maieſties name, to receiue them into your ſaid Gaole, and there ſafely to keepe them vntill ſuch time as they ſhall make their fines to our ſaid Soueraigne Lord, for their ſaid Treſpaſſes, and ſhall bee thence deliuered by the order of the law of the land. Heereof faile you not, vpon the perill that may follow thereof. Yeouen at Weſton aforeſaid, vnder my ſeale, the day and yeare abouesaid. *Preſidente.*

The forme of a Precept (to the Sherife) to returne a Iurie, for an Inquiry.

Cantebr. I Ohannes Cotton, *Miles, vnus Iuſticiarior' Domini Regis ad pacem in Comitat' Cantebr' conſeruand' Aſsign' Vicecomit' eiuſdem Comitatus ſalutem. Ex parte dicti Domini Regis tibi mando & præcipio, Quod venire facias coram me apud Balſham, in Comitat' prædicto, viceſimo die Septembr' proximo futur' 24. probos, ſufficientes, & legales homines de vicineto de Weſton in Comitat' prædict' quorum quilibet habeat 40. ſolidor' terrar' & tenementor' vel redd' per annum ad minus vltra repriſas, ad inquirend' ſuper Sacrament' ſuũ pro dicto domino rege de quodam ingreſſu manuforti facto in meſſuag' cuiuſdam A. B. apud Weſton præd', contra formam Stat. in Parliamento Domini*

Henr'

Henric' nuper Regis Angliæ ſexti, anno regni ſui octauo tento editi, Preſidents.
vt dicit' & videas quod ſuper quemlibet Iuratorum per te in hac parte impanellandorum viginti ſolidorum de exitibus ad præfatum diem returnes: Et hoc nullatenus omittas ſub pœna viginti librar' quam noueris te incurſum, ſi in executione præmiſſor' tepidus aut remiſſus fueris: Et habeas ibi tunc hoc præcepium. Teſte me præfato Iohanne Cotton, *decimo die Martij, anno Regni Dom. noſtri* Iacobi *Dei gratia Angliæ, Franciæ, & Hiberniæ Regis fidei defenſor' &c.*

The forme of the Enquirie, Inditement, Preſentment, or Verdict of the Iury.

INquiſitio pro Domino Rege capt' apud B. in Comitatu prædicto, Cantebr.
die Iulij, anno regni Domini noſtri Iacobi *Dei gratia Angliæ, Franciæ, & Hiberniæ Regis Fidei defenſor', &c. per Sacramentum A. B. C. D. E. F. &c. coram* Iohan. Cotton, *Milit', vno Iuſticiar' dicti Domini Regis ad pacem in dicto Comitat' conſeruand' (Necnon ad diuerſa felonias tranſgreſſ. & alia malifacta in eodem Commitat' perpetrata audiend' & terminand') aſſign': Qui dicunt ſuper Sacramentum ſuum prædictum quod A. B. de W. prædict'* Yeoman, *die legitime & pacifice ſeiſitus fuit in Dominico ſuo, vt de feodo de & in vno meſſuagio &c. cum pertinentijs in W. prædict', & poſſeſſionem ac ſeiſinam ſuam prædict' ſic continuauit quouſque C. D. de &c. & alij malefactores ignoti primo die Septembr' vltimo elapſo, (*vi & armis, videlicet, cum baculis, gladijs, arcubus, & ſagittis) in meſſuagium prædictum &c. intrauerunt, ac ipſum A. B. inde diſſeiuerunt & manuforti expulerunt, & eundem A. B. ſic diſſeiſitum & expulſum ab eodem Meſſuagio &c. a prædicto primo die &c. vſque ad diem captionis huius inquiſitionis cum huiuſmodi fortitudine & potentia armata extra tenuerunt & adhuc extra tenent, in magnam pacis dict' Domini Regis perturbationem ac contra formam Statuti in Parliamento Domini* Henrici, *nuper Regis Angliæ ſexti, anno regni ſui octauo tento, & in tali caſu editi & prouiſi: Vbi nullus eorum, nec aliquis alius cuius Statum ipſi aut aliquis eorum habuerunt, aut habuit, aliquid in eodem Meſſuagio &c. aut in aliqua inde parcella habuerunt, aut habuit infra tres annos proximos ante ingreſſ. ſuum prædictum, neque alio tempore præcedente ad notitiam Iurator' prædictorum.*

*Yet theſe words, *vi & armis*, heere ſeeme to bee needles, being neceſſarily implied in the word, *Manuforti. Vide antea tit.* Forcible entry

This laſt clause may be omitted.

Alio modo ſuper Statutum 8. H. 6.

Preſidents.

IVrator' *pro Domino Rege, præſentant,* * *quod cum in Statuto in Parliamento Domini* Henrici, *nuper Regis Angliæ ſexti apud Weſtmonaſt. Anno regni ſui octauo tento edit', inter cetera continetur, Quod ſi aliqua perſona, ſiue aliquæ perſonæ de aliquibus terris aut tenementis manuforti expulſ. ſeu diſſeiſit' vel pacifice expellatur & poſtea manuforti extra teneatur vel aliquod feffament', vel diſcontinuac' inde poſt talem ingreſſum ad ius poſſeſſoris defraudandum & tollendum aliquo modo fiat, habeat in hac parte pars grauat' verſus talem diſſeiſitor' aſſiſam noue diſſeiſin vel breue tranſgreſſ. Et ſi pars grauat' per aſſiſam, vel per actionem tranſgreſſ. recuperet, vel per veredictum, vel aliquo alio modo per debit' legis formam inueniatur, quod pars defendans in terris, & tenementis, ſic ingreſſus fuit, vel ea per vim poſt talem ingreſſum ſuum tenuit, recuperet quer' dampna ſua ad triplum verſus talem defend', & vlterius idem defend' finem & redemptionem dicto Domino Regi faceret, prout in Statut' præd' plenius continetur. Quidam tamen W. W. nuper de W. in Comitatu prædict',* Husbandman, *& G. D. de eadem,* Labourer, *Statutum prædict', minime ponderant', nec pœnã in eodem Statut' content' aliqualiter veretes,*

die Februar' anno regni Regis Iacobi, &c.

apud C. in Comitatu prædicto, in vnum Horreum exiſtent' liberum tenement' Roberti W. *(Decani Eccleſiæ Cathedralis W.) manuforti, ac vi & armis, videlicet, gladys, &c. intrauer' & ingreſſum fecerũt, & prædictum Decanum Eccleſiæ prædictæ a libero tenemento ſuo manuforti, ac vi & armis prædictis inde ſine iudicio expuler' & diſſeiſiuer', & L. P. Milit' firmar' Decani prædicti, Horrei prædict', adtunc & ibidem de prædict' horreo expulerunt & eiecerunt, & præfatum Decanum ſic inde expulſum & diſſeiſit' a prædict' die Februar' anno ſupradicto, vſque diem captionis huius Inquiſitionis, de prædict' Horreo vi & armis prædict' & manuforti extratenuerunt & adhuc extratenent, in contemptum dicti Domini Regis nunc, & ad graue dampnum ipſius R. & contra pacem dicti Domini Regis, & contra formam Statuti prædicti, &c.*

* And yet it ſeemeth not beſt to relate the ſtat. but ſhew the forcible entry &c. & to conclude, *contra formam ſtatuti in Parliamento. Vide poſtea tit. Endowements.*

Alio

Alio modo ſuper Statutum 5. R. 2.

For ſuch recitall of the ſtat. ſee after in the title. Enditements.

Inquiratur pro Domino Rege, &c. quod cum in Statuto in Parliamento Domini* Richardi *nuper Regis Angliæ ſecundi poſt Conqueſtum, apud Weſtmonaſt. Anno regni ſui quinto tent' edit', inter cetera ordinat' ſit, quod nullus faceret ingreſſum in aliquas terr' ſiue tenement', niſi in caſu, vbi ingreſſus datur per Legem, & in illo caſu non manuforti, nec cum multitudine gentium, ſed licito & quieto modo tantum; Et ſi quis in contrarium fecerit, & inde debite conuict' fuerit, per impriſonament' corporis ſui puniatur, & finem ad voluntatem Domini Regis redend' prout in eodem Statuto, inter alia plenius continetur. Quidam tamen T. H. de I. in Comitatu prædict',* Yeoman, *& alij &c. Statutum prædict' minime ponderant', ſecundo die Maij, anno regni Domini* Iacobi, &c. *vi & armis, videlicet, baculis, gladijs, falcaſtris, & bifurcis, in vnum clauſum I. C. Militis iacent' apud in Comitatu prædicto, in quodam loco ibidem vocat' H. ſuper poſſeſſionem eiuſdem I. C. Militis, vbi ingreſſus eis, aut eorum alicui non datur per Legem, ingreſſum fecerunt, & cent' perticas ſepium viuar', ipſius I. Militis, adtunc & ibidem creſcent' radicauer' euulſerunt, & ſpoliauerunt, in dicti Domini Regis nunc contemptum, & ad graue dampnum ipſius I. C. Militis, & contra formam Statuti prædicti, &c.* Preſidents.

The Warrant to the Sheriffe, for the making of Reſtitution (if the Iuſtice himſelfe will not make it.)

Iohannes Cotton *Miles, vnus Iuſticiarior', &c. aſſignat' Vicecomit' eiuſdem Comitat', ſalutem: Cum per quandam Inquiſitionem patriæ coram me apud B. in Comitatu prædicto, viceſimo nono die Iulij, &c. ſuper Sacrament' A. B. C. D. E. F, &c. ac per formam Statuti de ingreſſibus manuforti factis in tali caſu prouiſi compertum fuit: Quod C. D. &c. & alij, &c. primo die Septembris, &c. in quoddam Meſſuagium, &c. A. B. &c. in W. prædict' vi & armis ingreſſi ſunt, ac ipſum A. B. inde tunc manuforti diſſeiſiuerunt, & expulerunt & prædictum A. B. ſic expulſum a prædicto Meſſuagio, &c. a prædicto primo die Septembris, &c. vſque ad diem captionis Inquiſitionis prædict' manuforti, & cum potentia extra tenuerunt, prout per Inquiſitionem prædictam plenius liquet de recordo:* Cantebr.

Preſidents. *Ideo ex parte dicti Domini Regis tibi mando & præcipio quod (ad hoc debite requiſitus) vna cum poſſe comitatus tui (ſi neceſſe fuerit) accedas ad Meſſuagium & cetera præmiſſa, ac eadem cum pertinentijs reſeiſiri facias, & præfatum A. B. ad, & in, plenam poſſeſſionem ſuam inde, prout ipſe ante ingreſſum prædict' fuerat ſeiſitus reſtitui, & mitti facias, iuxta formam dicti Statuti: & hoc nullatenus omittas periculo incumbente. Teſte me præfato,* Iohanne Cotton,&c.

A Certificate of the Preſentment, or Verdict of the Iury, into the Kings Bench. *Vide antea tit: Forcible Entrie.*

A Certificate into the Kings Bench, of the Record of a Force (viewed by the Iuſtice.) *Vide antea titulo, Forcible Entrie.*

Theſe two former Certificates (and the like) may bee done and made by the Iuſtice of peace, by way of a Letter (as it ſeemeth) incloſing therein the ſaid preſentment of the Iury, or the ſaid Record of the Iuſtice; Except the ſame bee remooued thither by a *Certiorari*; And then may the Iuſtice returne them in ſuch manner as appeareth hereafter *tit. Certiorari*, with ſome little alteration.

Or the Iuſtice of Peace may himſelfe deliuer into the Kings Bench, ſuch Preſentment found before him, or ſuch Record made by him, and the like, and that without any *Certiorari*; for that he is a Iudge of Record. 8.Ed.4 18. 11 Coron.139. Cromp.133.

The forme of the Certificate (or the manner of the Returne) of the Writ vpon the Statute of Northampton, into the Chauncerie.

Vpon the Writt it ſelfe, theſe words may be indorſed.

The Returne *Executio iſtius breuis patet, in quadam Schedula eidem breui conſuta.*

And the Schedule may be thus.

The certificate. EGo Iohannes Cotton, *Miles, vnus Cuſtodum pacis Domini Regis in Comitatu Cantebr. certifico, in Cancellariam dict' Domini Regis, quod virtute iſtius breuis mihi primo deliberati, decimo die*

die Apriſ anno &c. publice proclamari (ex parte dc'i dom' regis) feci, apud B. cuius in dicto breui fit mentio, prout in dicto breui præcipitur, Et qd' quidam A.C. & D.E. de F. in com' præd' Laborers, *præd' proclam' parvipendent', poſt proclamationem præd', ibid' ſic fact' armati iuerũt, ac armat' potentiũ ibid' duxerunt, ſc. duas galeas, vnum arcũ, & decẽ ſagittas, duos gladeos & totidẽ pugiones, in pertubatione pacis dc'i dom' regis, ac terrorẽ populi ſui, necnon in contemptũ ſtat' in dict' breui ſpecificati manifeſtũ, Ac proinde dict' A.C. & D.E. vna eũ armaturis ſuis prædict' arreſtavi & eorũ corpora ad proximã priſonam dicti domin' regis in com' præd' duci feci, ibid' moratura donec aliud a dicto dom' rege pro ipſorũ deliberatione habuero in mandatis, Armaturas etiã eorũ præd' appretiari feci, per A.B.C.D. & E.F. de B præd'* yeomẽ, *ad hoc iũratos, Qui dicunt ſuper ſacramẽt' ſuũ præd', qd' præd' duæ galeæ valẽt decem ſolid', Et qd' dict' arcus & decẽ ſagitt' valent ſex ſolid', Et quod gladij præd' valent viginti ſolid', Et qd' dict' pugiones valent quinq; ſolid', & ſic armaturæ præd' valent in toto quadraginti & vnũ ſolid' de quibus paratus ſum reſpondere ſecund' tenorem dicti breuis, In cuius rei teſtimonium huic præſent' certificationi meæ ſigillum meum apposui, dat' apud præd' die & anno ſupradictis.*

Riots.

Riots.

The forme of the record of a Riot, viewed by the Iustices, and Sherife, or vnderſherife.

Cantebr.



Emorandum qd' viceſimo die Ianuarij, anno regni domini noſtri Iacobi dei gratia &c. Nos Iohannes Cuts *miles, &* Iohannes Cage *miles, duo Iuſtic' dicti domini regis ad pacem in comitat' prædicto &c. aſsign'. &* Willielmus Wendye *armiger' adtunc vicecomes eiuſdem com', ad tunc grauem quærimoniam & humilem petitionem A.B. de C. in dicto comitat'* yeoman, *in propriis perſonis noſtris acceſsimus ad domum manſionalem ipſius A.B. in C. prædicta, ac tunc & ibidem invenimus D.E.F.G. & H.I. de C. præd'* labourers, *ac alios malefactores & pacis dicti domini regis perturbatores ignotos (ad numerum decem perſonarum) modo guerrino arraiatos, viz. gladijs, pugionibus, galeis, loricis, arcubus, & ſagittis, illicite & riotoſe agregatos, & eandem domum obſidentes, multa mala in ipſum A.B. comminantes, in magnam pacis dicti domini regis perturbationem, ac populi ſui terrorem, & contra formam ſtatuti in parliamento domino Henrici nuper regis Angliæ quart', anno regni ſui decimo tertio tento editi & prouiſi, Ac propterea nos præfati* Iohannes Cuts, Iohannes Cage, & Willielmus Wendye, *præd' D.E.F.G.H.I. &c. tunc & ibidem arreſtari, ac proximæ gaolæ dict' domini regis in comitatu præd' duci fecimus, per viſum & recordum noſtrum de illicita congregatione & riota præd' conuictos, ibidem moraturos quouſq; finem dicto domino regi proinde fecerint. In cuius rei teſtimonium huic præſenti recordo noſtro ſigilla noſtra appoſuimus, dat' apud C. præd' die & anno primum præd'.*

And if a man be ſlaine, or maihmed, or a reſcous, bee done to the officer, by the riottors, Then the record ought to bee *riotoſe occiderunt*, or *riotoſe mahemauerũt*, or *riotoſe reſcuſſerunt*, but not *felonice*, becauſe their authority in this caſe is reſtrained to the riot only. *Lambert* 311.

The

The *Mittimus*, for conueying the riottors to the gaole, may (with ſome few words of charge) bee made out of that, which is here before, for ſuch as hold by force. See hereof *paulo antea tit. Preſidents, in Forcible Entrie.* *Mittimus.*

The Precept (to the Sherife) to returne a Iurie, for an Inquirie vpon a Riot.

IOhannes Cuts *miles*, & Iohannes Cage *miles*, *duo Iuſtic' &c. aſſignat', vicecomit' eiuſdem comitatus ſalutem. Ex parte dicti domini Regis tibi præcipimus, quod venire faci as coram nobis apud I. in comitatu prædicto die Ianuarij proxim' futuro 24. probos, ſufficientes, & legales homines de comitatu prædicto, quorum quilibet habeat terras & tenementa, infra dict' com' liberi tenementi per chartam, ad annuum valorem viginti ſoli', aut per copiam rotul' curiæ ad annuum valorem viginti ſex ſoli' & octo denarior', aut per vtrunq;, vltra omnes repriſas; an inquirendum pro dicto domino rege, ac pro indemnitate noſtra in hac parte, ſuper ſacramentum ſuum de quibuſdam illicitis aggregationibus & riottis apud C. in comit' prædict' nuper commiſſis vt dicitur, Et hoc nullatenus omitt as ſub pœna viginti libr', quam incurſurus es, ſi in executione præmiſſor' deſeceris, Et habeas ibi tunc nomina iuratorum prædictorum, & hoc præceptum, dat' ſub ſigillis noſtris die Ianuarij anno regni dicti domini noſtri Iacobi &c.* Cantebr.

The forme of the Inquiry, indictment, or pretentment of the Iurie.

INquiſitio pro domino rege &c. (as before in Forcible Entries) coram Iohanne Cuts *milite*, & Iohanne Cage *milite*, *duo Iuſticiar' &c. Qui ad hoc Iurati & onerati dicunt ſuper ſacramentum ſuũ prædictum, Quod D. E. F. G. & H. I. ſimul cum alijs malefactoribus & pacis dicti domini regis perturbatoribus ignotis (ad numerum ſeptem perſonarum) modo querino arrayata, vi & armis, videlicet, hawberdis, gladijs, arcubus & ſagittis die menſis Ianuarij, vltimi' præterito apud C. in comitatu predicto inter horas octauam & nonam poſt meridiem eiuſdem diei, domum manſionalem A. B. de C. prædict' yeoman, ſcituat' in C. prædict' riotoſe fregerunt & intrauerunt, & in ipſum A. B. tunc & ibidem inſultum fecerunt, ac ipſum tunc & ibidem verberauerunt, vulneraverunt, & indignis modis tractaverunt, Ita quod de vita eius deſperabatur, in magnam* Cantebr.

Præſidents. *magnam pacis dicti domini regis perturbationem & populi terrorem, ac contra formam ſtatuti de riotis, routis, & congregationibus gentium illicitis in parliamento domini Henrici nuper regis Angliæ quarti anno regni ſui decimo tertio tento proviſi & editi.*

As for the certificate (which ought to be made to the K. and the councel in caſe that by this enquiry, the trueth of the fault and riot be not found) ſuch certificate may be done in Engliſh, by way of a letter, comprehending the trueth of the whole matter, with the certainetie of the time, place and other circumſtances of the fact or riot, together with the certainetie of the names of the riotters, as alſo of the names of ſuch who by maintenance, embracerie, or otherwiſe, were any impediment to the finding thereof, with their ſeuerall miſdemeanours: which certificate or letter is to be directed and ſent by the ſaid Iu. of P. and ſherife or vnderſherife, into the ſtat-Chamber &c. within one moneth. See hereof *antea tit. Riots.* Certificate.

A trauerſe to an Indictment of a Riot, and the record thereupon.

Cantebr. *ALias, ſcilicet ad ſeſſionem pacis tentam apud Caſtrum Cantebr. in comitatu prædicto die Martis proximæ ante feſtum Sancti Mathei Apoſtoli, anno regni domini noſtri Iacobi dei gratia Angliæ, Franciæ, & Hiberniæ regis fidei defenſoris &c, coram & alijs ſocijs ſuis Iuſticiar' dc'i domini regis ad pacem in comitat' prædict' conſervand', Necnon ad diuerſa felon', tranſgr', & alia malefact' a in eod' com' perpetrata audiend' & terminand' aſſign', per ſacramentum duodecem Iurator' extitit præſentatum quod I. L. de &c. R. M. de &c. & T. L. de &c. cum diuerſis alijs ignotis malefact' & pacis dicti domini regis perturbatoribus, modo guerrino arraiato, vniti & aſſemblati viceſimo die Iulij in nocte eiuſd' diei, anno &c. vi & armis, viz. bacul', gladis, clipeis, pugionibus, falcaſtris, & alijs armis, tam inuaſiuis, quam defenſiuis apud C. &c. riotoſe & routoſe, fregerunt, & intraverunt, & octo plauſtra fæni ad valent' &c. adtunc & ibid' exiſtent' de bonis & catallis dicti adtunc & ibid' iniuſte & illicite ceperunt & aſportaver' contra pacem dict' dom' regis &c. Et contra formã ſtat. inde editi & proviſi, per qd' præcept' fuit vic' com', quod non omitterit &c. quin venire facerit eos ad reſpond' &c. poſteaq; ſc. præd' die Martis prox. ante feſtũ ſanct' Mathæi Apoſtoli ann' ſuprædicto coram præf. Iuſtic' venerũt præd' I. L. R. M. & T. L. in propꝛijs perſonis ſuis, &* The ſtile of the Seſſions. The indictment. Proceſſe ad reſpondendum.

Trauerse. & habito auditu indictamenti præd', separat' dicunt, qd' ipsi non sunt inde culpab. & de hoc ponunt se super patriam, Et A.M. qui pro dn'o rege in hac parte sequitur simili' &c. Ideo veniat inde iurata coram Iustic' dc'i dn'i regis ad pace in com' præd' conservand' assign' &c. ad sessione pacis apud & c. die Martis prox. post Epiphaniã dn'i tunc prox. futuro tenend', Et qui &c. ad recogn' &c. quia tam &c. idem dies datus est tam præf. A.M. qui sequitur &c. quã præf. I.L. R.M. & T.L. &c. Ad quas quidẽ sessiones, tentas apud præd' in com' prædict' die &c. coram dn'o T.P.G.N. & H.P. milit' & socijs suis Iustic' dicti dn'i regis ad pacẽ in com' præd' conservand', Necnon ad diversa felon' transgr' & alia malefacta in eod' com' perpetrata audiẽda & terminand' assignat', venerunt tam præf. A.M. qui sequitur &c. quã præfati I.L.R.M. & T.L. in propriis person' suis, Et Iurator' præd' per vicecom' com' præd' ad hoc impannellati & exacti viz. I.F. I.G. &c. sil'iter venerũt, qui ad veritatem de præmiss. dicendã triati & iurati, dicunt super sacrament' suum, qd' præd' I.L.R.M. & T.L. culpabiles sunt, & eorũ quilibet culpabilis est de transgr', contemptu, & riotto prædict is in indictamento præd' superius specificatis, modo & forma prout superius vers. eos supponitur, Ideo concessũ est per curiam qd' præd' I.L.R.M. & T.L. capiantur ad satisfaciend' dc'o dn'o regi de finibus suis, occasione transgress. contemptus & riotti præd', Qui quidem I.L.R.M. & T.L. adtunc & ibid' present' in curia petierũt se ad finem cum dc'o dn'o rege occasionẽ præd' admitti, Et inde ponunt se seperatim in misericord' dn'i regis & assessatur finis eiusdem I.L. per Iustic' præd', ad tres lib. sex solid', octo denar': Et finis eiusdem R.M. assessatur ad vigint' solid', Et assessatur finis eiusde T.L. ad quinq; libr', bone & legalis monetæ Angliæ, Ad opus & vsum dicti domini regis.

Præsidents.

Iurie.

Day giuen.

The verdict.

The Iudgement.

Cap. pro fine.

Ponunt se in misericordia regis.

Fine assessed.

I haue inserted this former president, for that it discouereth much matter worthy the Iustices obseruation.

Indict-

Indictments.

FOr the forme of indictments, in caſes of forcible entrie, and riots, I haue here before ſet you downe certaine preſidents: Neuertheleſſe for that theſe indictments be the chiefe foundation whereupon the whole buſineſſe and triall is after to be grounded and built, I thought it not amiſſe to obſerue here theſe few generall rules, aſwell concerning the matter, as the forme of theſe, and all other indictments or preſentments to be taken before Iuſtices of peace.

Firſt in theſe indictments of forcible entrie, and riots (as alſo in all other indictments of felony or treſpas) it is good to ſay *contra pacem*, or other words to that effect.

Alſo theſe words, *vi & armis, viz. gladijs &c.* are not of neceſſitie, yet it is good to vſe them, eſpecially if the circumſtances of the fact do require them; for theſe circumſtances do either agrauate, or diminiſh the offence. Lamb. 484.

Yet theſe words *vi et armis* &c. are needleſſe in an indictment of Forcible Entrie, becauſe they are implyed in the word force.

Alſo in indictments founded vpon ſtatutes, it is not needfull, nay it is not ſafe to recite the ſtatute at all: for as the recital is not neceſſarie; ſo the miſrecitall thereof is fatall to the Indictment, and maketh it void: But it is ſafe and ſure to draw the indictment with this concluſion, *ſcil.* Co. 4. 48.

Contra formam ſtatuti in huiuſmodi caſu prouiſi ac editi, If the indictment be founded vpon one ſtatute: Or *contra formam deuerſorum ſtatutorum in huiuſmodi caſu edit. et prouiſor* without naming any ſpeciall ſtatute, where many ſtatutes doe concerne one offence. Dyer 363.

Yet the offence againſt the ſtatute muſt be certainely diſcribed in the indictment, and the materiall words in ſuch ſtatute muſt be ſet downe therein. *Plo.* 1. *et* 79. *Lamb.* 485, Plo. 1. & 79.

Alſo

Also all indictments and presentments (being in the nature of declarations for the K. against the offendors) ought to containe certainetie, and therefore sixe principall things bee most commonly requisite in all presentments before the Iust. of peace. *viz.* Lamb. 469. &c.

1 The names, and sirnames aswell of the parties indicted, as of the parties offended, with the addition of the degree or mysterie and dwelling place of the party indicted.

Yet in some cases, an indictment, *qd' procuravit personas ignotas*, or *qd' bona cuiusdã ignoti cepit &c.* or the like, may be good. See *plus Lambert* 470. 476.

2 The time, *sc.* the day and yeare when the offence was done.

3 The place, *sc.* the towne and countie, where it was done, as at B. in the countie of C.

4 The name or quality of the thing, in which the offence is committed, *viz.* of dead things, it may be, *bona & catalla*, expressing them certainely: Of liue things, *equum, bouem, ouem &c.* but not *bona & catalla*. So of entrie &c. into lands &c. to expresse certainely, whether it bee a house, land, meadow, pasture, wood &c. Lamb. 478

5 Also the value or price of the thing, is commonly to bee set downe to aggrauate the fault.

6 The manner of the fact, *sc.* the manner and nature of the felonie or trespas. See *Lambert* 480. Lamb. 480.

Also indictments ought to be framed so neere the truth as may be, and the rather, for that they are to be found by the Iury vpon their oathes.

Yea an indictment, being *veredictum, id est dictum veritatis*, and a matter of record, ought to set forth all the truth, that by law is requisite; for *de non apparentibus, & non existentibus eadem ratio*: And euery part of the indictment material ought to be found by the oath of the Iurors, and is not to bee supplied by auerrement, otherwise the indictment will be insufficient. Co. 4. 47.

Proces.

The formes of proces (vpon Indictments of treſpas) which alſo the Iuſtices of peace, out of Seſsions, may in ſome few caſes, make out againſt offendours, as it ſeemeth.

NOte that as the authoritie of making proceſſe vpon Indictments, is giuen by expreſſe wordes in the commiſſion, to the Iuſtices of peace in their Seſſions, ſo is it giuen by expreſſe words, in ſome ſtatutes, to the Iuſtices of peace (yea to one Iuſtice of peace) out of their ſeſſions to make out proces, vpon indictments found againſt offendors, or vpon information againſt them, as if they were indicted of treſpaſſe in ſeſſions, as you may ſee here *tit. Forcible Entrie, & tit. Sheriſes antea.*

Alſo in ſome other caſes, and by ſome other ſtatutes this authoritie of making out proces (againſt offendors) by the Iuſtices of peace out of their ſeſſions, ſeemeth to be imployed of congruence, or rather of neceſſitie, as where any ſtatute doth giue power or authoritie to the Iuſtices, or Iuſtice of peace, out of their ſeſſions, to inquire, heare, and determine (as *hic tit. Riots, tit. Tranſportation, tit. Tyle, & tit. Weights.*) In theſe, and in all other ſuch caſes, where the Iuſtices may enquire, heare, and determine, there after indictment and preſentment of the offence, the ſaid Iuſtices may make out proces againſt ſuch offendors, to cauſe the offendors to come and anſwere; for vnleſſe the offendors do come in, either *gratis*, or by proces, the Iuſtices cannot proceed to heare and determine. Lamb. 317. 501

Or elſe in the former caſes of Tranſportation, Tyle, and Weights, as alſo in all other caſes where any ſtatute doth giue power to the Iuſtices of peace, out of their ſeſſions, to heare and determine either vpon the confeſſion of the offendors, or vpon examination of witneſſes, whereof ſee *antea tit. Heare and Determine.* &c. In all ſuch caſes, it ſeemeth the Iuſt. of P. may graunt out their warrant againſt ſuch offendors, to appeare before

before them, to anſwere to their ſaid offences, And therupon may proceed to examine, heare, and determine the offence, as being conuict thereof vpon ſuch confeſſion, or examination, without any indictment, or proces. Now theſe proces ſeeme to be as followeth.

1. Venire fac'. First if the offendor be abſent a *Venire facias* ſhall be awarded by the Iu. or Iuſtices of P. vnder his or their owne Teſte: And if therupon the offendor be retourned ſufficient (and maketh default) then a *diſtringas* ſhalbe awarded, which *diſtringas* ſhall goe forth *infinite*, till the offendor come in: But if a *Nihil habet* &c. be at the firſt retorned, then after the *Venire facias*, a *Capias*, then an *Alias*, and after a *Pluries* ſhall go forth, & after that an *Exigent*, til the party be taken, or yeeld himſelfe, or els be outlawed.

2. { Diſtringas or Capias.

And theſe are the ordinary proces vpon all indictments of treſpas againſt the peace, or of other offences againſt penall ſtatutes, not being felony, or a greater offence. But this proceſſe is commonly grounded vpon an indictment, and is onely to cauſe the offendor to come, and to make his anſwere, and therfore if the offendor be preſent, and confeſſe ſuch indictment, information, or offence, then needeth there no proces at all, for he ſhalbe committed to priſon (commonly) there to remaine vntill he hath paid his fine, or giuen ſureties for it. 1. *H.* 7. 20. & *Br. Imprif.* 100.

Alſo theſe proceſſe ſhalbe alwaies directed to the ſherife (who is the immediate miniſter and officer of the K. to execute all proceſſe) except the ſherife himſelfe, or his officers bee parties: But if the Iu. of P. be to grant out proces againſt the ſherife, vnderſherif or their officers, offending contrary to the ſtatutes 8. *H.* 6. *ca.* 9. or 11. *H.* 7. *ca.* 15. which you may ſee here *pag.* 46. & 108. It ſeemeth ſuch proces ſhal be directed to the Coroners of the countie, and ſhalbe ſerued by them, And ſo are diuers bookes, as 2. *H.* 6. 12. 8. *H.* 6. 30. 9. H. 6. 11. & 18. *Ed.* 4. 7. and others: And ſo alſo the oath of the Iu. of P. ſeemeth to bind them.

Note alſo, that this proces ought alwaies to bee made in the name of the king: and for that the king is a partie, it muſt alſo bee with a *Non omittas propter aliquam libertatem, &c.* But the teſte thereof may be vnder the name of the Iuſtices of peace.

The formes of theſe proceſſes, to be made by the Iuſtices of P. out of the ſeſſions ſeeme to be as followeth.

The *Venire facias* thus.

IAcobus *dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ, rex fidei defensor' &c. vic' com' Cantebr' salutem. Præcipimus tibi, quod non omittas propter aliquam libertatem in balliua tua, quin venire facias A.B. de C. in dicto comitat' tuo* yeoman, *coram R. M. milite, & M. D. armig' duobus Iusticiar' nostror' ad pacem conseruand', Necnon ad diversa felonias transgres. & alia malefacta in dicto comitat' perpetrata audiend' & terminand' assignatis, apud Lynton in comitat' tuo die Maij proxim' futur' ad respondend' nobis super quibusdam articulis super ipsum A. B. præsentatis, & habeas ibi tunc hoc præceptum, Teste R. M. apud Lynton die &c.*

The Distringas thus.

IAcobus *dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex fidei defensor' &c. vicecomit' Cantebr. salutem, Præcipimus tibi, quod non omittas propter aliquam libertatem in balliua tua, quin eum ingrediaris & distringas A.B. de C. in comitatu tuo* yeoman, *per omnia terras & tenementa &c. Et quod de exitibus eorum respondeas &c. Et quod habeas corpus eius coram &c. Iustic' &c. ad respondend' &c. teste &c.*

The writ of *Capias* thus.

IAcobus *dei gratia Angliæ &c. vicecom' Cantebr. salutem. Præcipimus tibi quod non omittas propter aliquam libertatem in balliva tua quin eam ingred' & capias I.D. de A. in comitatu tuo* yeoman, *&c. si invent' fuerit in balliva tua, & eum salvo custod' fac': Ita quod habeas corpus eius coram R. M. milite, & M. D. armig' duobus Iusticiar' nostror' ad pacem conservand', Necnon ad diversa felonias, transgr', & alia malefacta in eodem com' tuo perpetrat' audiend' & terminand' assign' apud L. in com' tuo die Martij prox. futur' ad respondend' nobis de diversi. transgr' contempt' & offencis de quibus ipse indictat' existit: Et habeas ibi tunc hoc breve, Teste R. M. apud Lynton sexto die Ia. &c. anno regni nostri &c.*

Ad quem diem Will'us Wendye *ar' vicecom' præd' retorn' quod ipse non est inventus in balliva sua, & ipse non venit, Ideo præceptum est sicut alias &c.*

The

The *Capias alias.*

IAcobus &c. vic' &c. *Præcipimus tibi ſicut alias tibi præcipimus, qd' non omittas &c. verbatim vt ſupra.*

Ad quem diem &c. vt ſupra, & ipſe non venit, Ideo præcept' eſt vic' ſicut pluries &c.

The partie may appeare *gratis*, and ſo avoid the attachment or arreſting of his bodie: and that is the cauſe, that the Entrie is made, *& ipſe non venit.*

The *Pluries Capias.*

IAcobus &c. vic' &c. *ſalutem, præcipimus tibi ſicut plur' tibi præcipimus, qd' non omittas &c. vt ſupra.*

Ad quem diem Will'us Wendye *ar', vic' com' præd' retorn', quod præd' C. D. non eſt inventus in &c. & ipſe non venit, Ideo præcept' eſt qd' exigi facias &c.*

The Exigent.

IAcobus &c. vic' &c. *ſalutem, præcipimus qd' exigi fac' C. D. de A. in comitat' tuo* yeoman, *quouſq; ſecund' legem & conſuetudinē regni noſtri Angliæ vtlagatur ſi non comparuerit, & ſi compar', tunc eum capias & ſalvo cuſtodiri fac', Ita qd' habeas corpus eius coram R. M. milite & M. D. duobus Iuſtic' ad pacem noſtram conſervand', Necnon ad diverſa felon' tranſgr' & alia malefact' in eodem com' tuo perpetrat' audiend' & terminand' aſſign', apud L. in com' tuo die Septemb. prox. futur' ad reſpond' nobis de diverſis tranſg' contempt' & offencis de quibus ipſe indictatus exiſtit, & habeas ibi tunc hoc breve, teſte R. M. apud L. octavo die Septem. anno regni noſtri &c.*

Ad quem die Will'us Wendye *ar' vicecom' com' præd' retorn', qd' ad com' ten' tū apud Cantebr' die anno regni dn'i regis nūc &c. Et ſic ad quatuor alios com' tunc prox. ſequen' ibid' tent' præd' C. D. exactus fuit, & non comparuit, Ideo vtlagat' fuit.*

Theſe proceſſe are ſent out to the end, that either the party ſhal come or be brought in, to make his anſwer, & to be iuſticed by the law; or elſe that (for his contumacy) he ſhalbe outlawed, and ſo to be depriued of the benefit of law: But the power of the Iu. of
Lamb 503. P. endeth with the vtlary; for they can make no *Capias vtlagatū*, but muſt certifie the vtlary into the K. Bench.

Lamb. 508. Alſo all ſuch proceſſes (aſwell of *Capias* &c. as of vtlary) may

be ſtayed by a *Superſedeas* iſſuing from other Iuſt. of P. teſtifying that the party hath come before them, and hath found ſureties for his apparance to anſwere to the indictment, or to pay his fine &c. See here 326. Lamb. 508.

Note that this authority of the Iuſtices of P. in ſending out theſe proceſſes (being out of their ſeſſions) is beyond the bounds of their commiſſion: And againe by the commiſſion, one Iu. of P. alone cannot grant a *Capias*, nor other proces, but two Iu. of P. at the leaſt muſt do it, and that ſitting in the court, and in their ſeſſions: And yet neuertheleſſe, in theſe former caſes, the ſtatutes (expreſly, or by neceſſarie explication) giuing ſuch authority to the Iuſt. of P. or to one Iu. alone, and that out of the ſeſſions, are a ſufficient warrant and commiſſion to the Iuſtices of P. therein, as it ſeemeth. The Commiſſion. 14. H. 7. 8. Br. Peace. 5.

Trauerſe.

After that ſuch proceſſe (or any other proces *ad reſpond'*) bee awarded againſt the party, it ſeemeth hee may come in and yeeld himſelfe to pay his fine, or elſe he may offer his trauerſe to the indictment found againſt him, before the Iu. of P. and the Iu. ought to allow him his trauerſe againſt it, which trauerſe is to take iſſue vpon the chiefe matter of the indictment, or to denie the point of the indictment. Lamb. 523.

But although the Iuſtices of P. haue power in ſome caſes as aforeſaid (out of their generall ſeſſions) to take indictments, and after ſuch indictment found to award proces *ad reſpond'* againſt offendors, and to heare and determine therof: and the offendors alſo haue libertie to come in, and to ſpeak, and anſwere for themſelues, and may offer their trauerſe, and that the Iu. of P. are to allow of, and to receiue the ſame: yet *quære* whether the Iuſtices of Peace (out of their generall ſeſſions) may trie ſuch trauerſe being tendred to them, without which triall all the reſt may ſeeme idle: Or that vpon the trauerſe tendred, they muſt certifie, or ſend the inquiſition or indictment ſo found before them, into the Kings Bench, or vnto their quarter, or generall ſeſſions of the peace, there to bee tried and determined: howſoeuer, it is ſafeſt (after ſuch trauerſe tendred) to certifie or deliuer ſuch inquiſition or indictment into the K. Bench, or to their next quarter ſeſſions: and ſo to refer the triall of the trauerſe, and further proceedings therein. See hereof *Riot and Forcible Entrie*. See Lamb. 522. 523.

Certi-

Certiorari.

The Returne of a Certiorari, *ſent to remooue an Inditement, may be thus.*

FIrſt, vpon the backeſide of the Writt of *Certiorari*, endorſe theſe, or the like words:

Executio iſtius breuis, patet in quadam Schedula eidem breui annexa.

And that Schedule may be thus.

EGo Michael Dalton, *vnus Cuſtodum Pacis, ac Iuſticiariorum Domini Regis, ad pacem in dicto Commitatu Cantebr. conſeruandam, necnon ad diuerſa felonias, tranſgreſ. & alia malefacta in eodem Comitatu perpetrata audiendum & terminand' aſſignator' virtute iſtius Breuis mihi deliberati indictamentum illud (vnde in dicto breui fit mentio) vna cum omnibus idem indictamentum tangentibus, in Cancellariam dicti Domini Regis. diſtincte & aperte ſub ſigillo meo certifico. In cuius rei Teſtimonium, ego præfatus M. D. hijs præſentibus ſigillum meum appoſui. Datum die menſis Anno regni, &c.*

Then take the Record of the Inditement, and cloſe it within the Schedule, and ſeale them vp both together.

Now to ſhewe what is further meete for the Iuſtices of peace to know, concerning this Writ of *Certiorari*, and their certifying or returne thereof.

After an Inditement found before Iuſtices of peace, a *Certiorari* is procured by the meanes of ſome partie indited or grieued, thereby to remooue ſuch Inditement from the ſaid Iuſtices, and to conuey it to Iuſtices of a higher authoritie, to the end the partie may either Trauerſe ſuch Inditement aboue, or may there auoid it for inſufficiency of forme or matter.

And this *Certiorari* is the Kings Writ, iſſuing ſometimes out of the Chauncery, and ſometimes out of the Kings Bench, and may be directed to any Court of Record, or Officer of Record, (as to a Iuſtice of peace, Sheriffe, Coroner, or Eſcheator) to bee certified

Fitz. 245. a.

certified of any Record, which is before any of them: and first an *Alias*, then a *Plur'*, and lastly an *Attachment* lieth against them that should send it (if the Record be not certified accordingly) or it seemeth a *Subpœna* is vsed at this day.

If it bee returnable into the Chauncery, then are the words, *In Cancellaria nostra*; and if into the Kings Bench, then the words are, *Nobis mittimus*.

Fitz.145.b. The *Certiorari* may be sometimes to remooue and send vp the Record it selfe, and sometimes but onely the Tenor of the Record, (as the wordes therein bee) and it must bee obeyed accordingly.

Plo.393. If there bee variance betweene the *Certiorari* and the Record which is to bee remooued, the Iustices need not to certifie such Record. *Lamb.*500.

Cromp.132.a. & 133.b A Iustice of peace may deliuer (or send) into the Kings Bench an Inditement found before him; or a Recognizance of the peace taken by him; or a force recorded by him, without a *Certiorari*; But if a Iustice of peace hauing a Record in his handes, bee discharged of his Office, now hee cannot certifie it without a *Certiorari*, although hee bee made a Iustice of the Peace againe.

6 Ed.4.5. If a *Certiorari* bee to send vp the Inditement of A. in which Inditement some others bee endited together with the same A. yet neede not the Iustice of peace to make Cetificate concerning any but A. For although they bee named ioyntly, yet be they indited seuerally, and the King may pardon A. without forgiuing the other. *6.Ed.*4.5.

If a Certiorari, shall come to the Iustices of peace to remoue an Inditement, and the partie sueth not to haue it remooued, but suffereth it to lye still, yet it seemeth, the Iustices of peace ought *(ex officio)* to send it away, becausse the Writt conteineth in it selfe a commaundement to them so to doe, and so is a *Supersedeas* of it selfe to the Iustices of Peace, to stay their other proceedings.

Lamb.497. And albeit the *Certiorari* bee a *Supersedeas* of it selfe, yet may the partie vpon the *Certiorari* purchased, haue a *Supersedeas* also, directed to the Sheriffe, commaunding him that he arrest him not vpon that Record before the Iustices of Peace. *Fitzh. fol.* 237. In which place also hee doubteth, whether the Iustices of Peace themselues ought not of duetie to award their owne *Supersedeas*, to the same effect, after that the Writ of *Certiorari* is brought to their hands.

F.N.B.237.c.

If a

Lamb.458. If a *Certiorari* come to the Iuſtices of peace to remooue an Enditement, and in trueth the Inditement was not taken till after the date of that *Certiorari*, yet if the Enditement bee remooued thereby, it is good ynough, for that they both bee the Kings Courts, (1. *Rich.* 3. 4.) and in the ſuch a caſe it is now vſuall to remooue it.

Lamb.571. All the higher Courts at Weſtminſter may write to the Iuſtices of peace, to certifie their Records, that doe make for the triall of cauſes hanging in them; as you may reade 19. *H.* 6. 19. where they of the Common place did ſend to the Iuſtices of peace for an inditement, becauſe in a Writ of Conſpiracie (brought before them) it was materiall to haue it.

In ſome caſes the Iuſtices of peace may certifie a Record (by him made or found before him out of Seſſions) without any Writ of *Certiorari* therefore to him directed. *Vide antea tit. Forcible Entrie.*

In other caſes hee muſt of ductie certifie his proceedings, but may ſpare to certifie the Record, vntill a *Certiorari* come to him for it. See heereof *antea titulo*, *Suretie for the Peace.*

For the manner of the Writt of *Certiorari*, to remooue Records from one Court to another, or from the Iuſtices of peace, or other Officers of Record, to any the higher Courts at Weſtminſter &c. there are diuers formes and ſorts therof, as you may ſee in *Fitzh. Na. Br. fol.* 242. &c.

I will onely ſet you downe heere one forme for all, and ſo will conclude.

The forme of a *Certiorari* of the Chauncerie, to certifie a Recognizance, taken by a Iuſtice of Peace in the Countrey, for the keeping of the Peace, &c.

F.N.Br.81.c. Cromp.143. IAcobus *Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, Fidei defenſor, &c. Cuſtodibus pacis noſtræ, in Comitatu Cantebrig', & eorum cuilibet ſalutem: Volentes certis de cauſis* Certiorari, *ſuper tenorem cuiuſdam ſecuritatis Pacis, vel boni geſtus quam A. P. Armiger, nuper inuenit coram vobis, vel aliquo veſtrum, de eo quod ipſe dampnum vel malum aliquod R. S. aut alicui alij de populo noſtro de corpore ſuo nec faceret, nec fieri procuraret,*

raret quousſmodo: vobis mandamus, quod tenorem ſecuritatis pacis, ſiue boni geſtus prædict', nobis in Cancellar' noſtr' in Octabis Purificat' beatæ Mariæ, *proximum futur' vbicunque tunc fuerit, ſub ſigillis veſtris, vel vnius veſtrum diſtincte & aperte ſine dilatione mittatis, Et hoc ſub pœna centum librar' nullatenus omittatis, nec aliqis veſtrum omittat. Teſte meipſo apud Weſtmonaſt. die Nouembris, Anno regni noſtri decimo quinto.*

The Returne heereof, See *antea titulo, Suretie for the Peace.*

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